ROBBINS & KEEHN, APC
ATTORNEYS AT LAW
2450 UNION BANK BUILDING 530 'B' STREET
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UNITED STATES BANKRUPTCY COURT

FOR THE SOUTHERN DISTRICT OF CALIFORNIA

In re: **FRANCIS J. LOPEZ,** **Alleged Debtor.**	**CASE NO. 05-05926-PBINV** **Involuntary Chapter 7** **ALTERNATIVE RESOLUTION CENTER'S JOINDER IN INVOLUNTARY PETITION FOR FRANCIS J. LOPEZ** **Dept.: Four** **Judge: Hon. Peter W. Bowie**

Alternative Resolution Center ("Petitioner"), creditor of alleged debtor Francis J. Lopez, ("Lopez"), hereby joins the Involuntary Petition filed by Alan Stanly commencing the above-captioned case, and in support thereof states:

1. Petitioner maintains a principal place of business at 11601 Wilshire Blvd. Suite 1950 Los Angeles, CA 90025. Petitioner is owed $1,575.00 by Lopez as of the date hereof (the "Claim"). The Claim is for services rendered by Judge Sarokin serving as a discovery referee, stipulated to by the parties, and appointed by the court at the request of Lopez. Petitioner did not acquire its Claim by

C-1

transfer from another entity.

2. Petitioner's Claim is non-contingent and not subject to a bona fide dispute as to its existence, nature or amount.

3. Petitioner requests that an order for relief be entered against Lopez under Chapter 7 of Title 11 of the United States Code.

4. Petitioner declares under penalty of perjury that the foregoing is true and correct according to the best of its knowledge, information and belief.

Dated: Dec 28 05 By: ______________________

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PROOF OF SERVICE BY MAIL

STATE OF CALIFORNIA)
) ss.:
COUNTY OF LOS ANGELES)

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is 21800 Oxnard St., Suite 840, Woodland Hills, CA 91367.

NOTICE OF MOTION AND MOTION BY ALLEGED DEBTOR FOR SUMMARY JUDGMENT AND AN ORDER DISMISSING INVOLUNTARY PETITION; DECLARATIONS OF M. JONATHAN HAYES, FRANCIS J. LOPEZ AND STEVEN DAVIS IN SUPPORT THEREOF

by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at Los Angeles, California addressed as set forth below.

L. Scott Keehn
Robbins & Keehn, APC
530 "B" Street, Suite 2400
San Diego, CA 92101

I am readily familiar with this firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. postal service on that same day in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than 1 day after date of deposit for mailing in affidavit.

I declare under penalty of perjury that I am employed in the office of a member of the bar of this Court at whose direction the service was made and that the foregoing is true and correct.

Executed on May 29, 2006, at Woodland Hills, California.

Cassidy Hayes
(Type or print name)

[signature]
(Signature)

DOCKET NUMBER 62-1

M. Jonathan Hayes (Bar No. 90388)
Law Office of M. Jonathan Hayes
21800 Oxnard St, Suite 840
Woodland Hills, CA 91367
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Attorneys for Alleged Debtor Francis Lopez

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SO. DIST. OF CALIF.

UNITED STATES BANKRUPTCY COURT

SOUTHERN DISTRICT OF CALIFORNIA

SAN DIEGO DIVISION

In Re: FRANCIS J. LOPEZ, Alleged Debtor	CASE NO. 05-05926-PBINV Involuntary Chapter 7 **SEPARATE STATEMENT OF UNDISPUTED FACTS IN SUPPORT OF MOTION BY ALLEGED DEBTOR FOR SUMMARY JUDGMENT AND AN ORDER DISMISSING INVOLUNTARY PETITION; AND CONCLUSIONS OF LAW** Date: June 26, 2006 Time: 2:00 p.m. Ctrm: 4

TO THE HONORABLE PETER W. BOWIE, UNITED STATES BANKRUPTCY JUDGE, TO PETITIONING CREDITORS ALAN STANLY, NORTHWEST FLORIDA DAILY NEWS, ALTERNATIVE RESOLUTION CENTER:

COMES NOW alleged debtor Francis J. Lopez and submits the following Statement of Undisputed Facts in Support of alleged debtor's Motion for Summary Judgment ("Motion"). Alleged debtor submits that the following facts establish that there are no material facts in issue and that the request for summary judgment in this case should be granted and the case dismissed:

FACT	**EVIDENCE**
1. Lopez had at least 22 creditors on June 30, 2005.	1. Exhibit A. Declaration of Francis J. Lopez.
2. The debt of Lopez to Northwest Daily News on June 30, 2005 is disputed.	2. Declaration of Francis J. Lopez par. 2 and 10.
3. Lopez owed no debt to Alternative Resolution Center on June 30, 2005.	3. Declaration of Francis J. Lopez, par. 4. Declaration of Steven Davis
4. None of the 22 creditors are an employee or insider of Lopez.	4. Declaration of Francis J. Lopez par. 8.
5. None of the 22 creditors received any payments from Lopez in the 90 days before the involuntary petition was filed that was outside of the ordinary course of business.	5. Declaration of Francis J. Lopez par.
6. None of the 22 creditors received any payments or transfers for less than fair value or with intent of Lopez to delay, hinder or defraud his creditors.	6. Declaration of Francis J. Lopez par. 9
7. None of the 22 creditors are contingent as to liability or disputed except as to Northwest Daily News.	7. Declaration of Francis J. Lopez, par 10.
8. Lopez was generally paying his debts as they became due prior to June 30, 2005.	8. Declaration of Francis J. Lopez, par. 11.

CONCLUSIONS OF LAW

1) This involuntary petition must be dismissed because the alleged debtor had more than 12 creditors at the time of the filing of the involuntary petition and there are fewer than three petitioning creditors.

2) Even if there are sufficient petitioning creditors, this involuntary petition must be dismissed because the alleged debtor was generally paying his debts as they become due at the time of the involuntary filing.

Dated: March 29, 2006

Respectfully submitted

By: [signature]
M. Jonathan Hayes
Attorney for Alleged Debtor Francis Lopez

Signature by the attorney constitutes a certification under Fed. R. Bankr. P. 9011 that the relief provided by the order is the relief granted by the court.

Submitted by:

By: [signature]
M. Jonathan Hayes
Attorney for Francis J. Lopez

PROOF OF SERVICE BY MAIL

STATE OF CALIFORNIA)
) ss.:
COUNTY OF LOS ANGELES)

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is 21800 Oxnard St., Suite 840, Woodland Hills, CA 91367.

SEPARATE STATEMENT OF UNDISPUTED FACTS IN SUPPORT OF MOTION BY ALLEGED DEBTOR FOR SUMMARY JUDGMENT AND AN ORDER DISMISSING INVOLUNTARY PETITION; AND CONCLUSIONS OF LAW

by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at Los Angeles, California addressed as set forth below.

L. Scott Keehn
Robbins & Keehn, APC
530 "B" Street, Suite 2400
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I am readily familiar with this firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. postal service on that same day in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than 1 day after date of deposit for mailing in affidavit.

I declare under penalty of perjury that I am employed in the office of a member of the bar of this Court at whose direction the service was made and that the foregoing is true and correct.

Executed on May 29, 2006, at Woodland Hills, California.

Cassidy Hayes — (Type or print name)

[signature] — (Signature)

DOCKET NUMBER 64

138

M. Jonathan Hayes (Bar No. 90388)
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Attorneys for Alleged Debtor Francis Lopez

UNITED STATES BANKRUPTCY COURT

SOUTHERN DISTRICT OF CALIFORNIA

SAN DIEGO DIVISION

In Re: FRANCIS J. LOPEZ, Alleged Debtor	CASE NO. 05-05926-PBINV Involuntary Chapter 7 **OPPOSITION OF ALLEGED DEBTOR FOR SUMMARY JUDGMENT** Date: June 26, 2006 Time: 2:00 p.m. Ctrm: 4

TO THE HONORABLE PETER W. BOWIE, UNITED STATES BANKRUPTCY JUDGE, TO PETITIONING CREDITORS ALAN STANLY, NORTHWEST FLORIDA DAILY NEWS, ALTERNATIVE RESOLUTION CENTER:

I.

INTRODUCTION

Alleged Debtor Francis J. Lopez ("Lopez") hereby opposes the motion for summary judgment brought by Petitioning Creditor Alan Stanley on the ground that the evidence produced by Stanly establishes that there are more than 12 creditors in this estate and there are fewer than three Petitioning Creditors and therefore this case should be dismissed. Furthermore, Lopez is generally paying his debts as they become due.

II.

SUMMARY OF STANLY'S MSJ

Alan Stanly urges the court to reach the conclusion that there are no creditors at all in this estate and therefore the issue at hand in the "first phase," i.e., are there enough petitioning creditors, should be found in favor of Stanly as a matter of law. The basis for this startling position is that most of the 22 creditors identified by Lopez are disputed, or received avoidable pre- or post-petition transfers. Some of the creditors it is alleged were not creditors on June 30, 2005.

Mr. Lopez' creditors are almost all consumer type debts which he generally pays each month.

III.

LOPEZ HAD SIGNIFICANTLY MORE THAN 12 CREDITORS ON JUNE 30, 2005

Following the analysis of Mr. Stanly beginning on page 7:

A. Allstate Floridian. According to the MSJ, this creditor is not a creditor because Mr. Lopez was not indebted to Allstate Floridian as of June 30, 2005. That is not true because Allstate Floridian provided homeowners' coverage, and Mr. Lopez had a bill to pay in the approximate amount of $1,900. This bill was received prior to June 30, 2005.

Failure to pay this bill would have resulted in the cancellation of the coverage. Is Mr. Keehn suggesting that only bills with a due date of June 30, 2005 or before qualify as creditors? (See Response to Moving Party Separate Statement of Undisputed Facts in Support of Motion by Alleged Debtor for Summary Judgment, Page 5, Items 35 through 38; Page 6, Items 39 through 40; See Lopez Declaration, Page 4: Para. 14)

B. American Express. Mr. Keehn has claimed that Mr. Lopez doesn't actually owe American Express anything. Mr. Lopez has already provided documentation of the debt to American Express. Mr. Keehn, during the deposition of Mr. Lopez, asserted that American Express told him that they couldn't confirm that there was an amount owing. Mr. Lopez asked Mr. Keehn to provide written documentation as to that statement, which Mr. Keehn could not do, as none exists. Mr. Lopez is the primary guarantor of several American Express credit card accounts, plus a revolving line of credit. Mr. Lopez contacted American Express, who informed him that they did not have access to his accounts because of the involuntary petition, and that they were being handled by a separate department. (See Response to Moving Party Separate Statement of Undisputed Facts in Support of Motion by Alleged Debtor for Summary Judgment, Page 6, Items 41 through 43; See Lopez Declaration, Page 4: Para. 16; See Exhibit 14)

C. American Home Shield. This creditor issued a home appliance policy for Mr. Lopez's primary residence. This policy was an annual one, and was in effect at the time of the involuntary petition. At the time of the petition, Mr. Lopez was indebted to American Home Shield in the amount of $128.00.

D. Bank of America. Payments were made in the ordinary course of business to this creditor. These were in the amounts of $50.00 to $54.00 per month. If the payments had not been made, the account would have been closed, and the creditor would have taken action against Mr. Lopez. These were minimum payments required by this creditor to keep the account in good standing, made in the ordinary course of business, made according to ordinary business terms agreed upon by Mr. Lopez and the creditor. (See Response to Moving Party Separate Statement of Undisputed Facts in Support of Motion by Alleged Debtor for Summary Judgment, Page 6, Items 47 through 55; Page 7: Item 56; See Lopez Declaration, Page 4: Para. 16; See Exhibit 4)

E. Bankcard Services. This account is not subject to a bona fide dispute. At one time, this creditor imposed a late fee which Mr. Lopez felt should not have been applied, but this was rectified by the creditor to his satisfaction. As to a pre-petition preference, payments were made to keep the account in good standing, and were done in the ordinary course of business. Further, this creditor did not receive any payments from Mr. Lopez that were unusual as to the amount. Failure to pay this creditor would have resulted in a cancellation of the creditor's services, and would have resulted in collection and or other legal actions against Mr. Lopez. (See Response to Moving Party Separate Statement of Undisputed Facts in Support of Motion by Alleged Debtor for Summary Judgment, Page 8, Items 57 through 60; See Lopez Declaration, Page 4: Para 17).

F. Cingular Wireless. Payments made to Cingular Wireless were done in the ordinary course of business. Failure to make payments to this creditor would have resulted in the cancellation of Mr. Lopez's cell phone privileges, a vital service provided by the creditor. Post-petition payments to Cingular Wireless were made in exchange for continuing telephone services provided to Mr. Lopez. Most of the payments to this creditor were in fact made by Noveon Systems, Inc., Mr. Lopez's employer. (See Response to Moving Party Separate Statement of Undisputed Facts in Support of Motion by Alleged Debtor for Summary Judgment, Page 8, Items 61 through 64; See Exhibit 13).

G. Citicards. Mr. Lopez and Citicards made a payment arrangement of $379.00 per month, in order to keep this account in good standing. Payments were made on a monthly basis, by electronic debit from Mr. and Mrs. Lopez's bank account. These payments were made in the ordinary course of business, and failure to make them would have resulted in legal action against Mr. Lopez, as well as negative marks on his credit rating. Further, these were minimum payments, required in order for the continued service provided by the creditor to remain in place. The filing of the involuntary petition on June 30, 2005 resulted in Citicards informing Mr. Lopez that they could not accept further payments until the bankruptcy case was dismissed. . (See Response to Moving Party Separate Statement of Undisputed Facts in Support of Motion by Alleged Debtor for Summary Judgment, Page 9, Items 65 through 72; See Lopez Declaration, Page 4: Para. 16; See Exhibit 14)

H. Coastal Community Insurance. This creditor provides flood insurance for the Lopez's primary residence. Payments are made via an escrow account by the mortgage lender. The fact that payments are made from an escrow account in no way relieves Mr. Lopez from the obligation to pay these bills. As of June 30, 2005, Mr. Lopez did in fact renew his policy with this creditor, and continuation of coverage required that payments be made on the renewal policy. (See Response to Moving Party Separate Statement of Undisputed Facts in Support of Motion by Alleged Debtor for Summary Judgment, Page 9, Items 73 through 74; Page 10, Items 75 through 78; See Lopez Declaration, Page 5: Para. 19).

I. Cox Communications. This creditor provides cable and internet services to Mr. Lopez. Payments were made in the ordinary course of business, on a monthly basis. In general, payments were made by Mr. Lopez's employer, Noveon Systems, Inc. or were made by Mr. Lopez with reimbursement by Noveon. Failure to make these payments would have resulted in a termination of the services provided by this creditor. Continuation of services and their corresponding payments, post-petition, were necessary and done in the ordinary course of business. . (See Response to Moving Party Separate Statement of Undisputed Facts in Support of Motion by Alleged Debtor for Summary Judgment, Page 10, Items 79 through 81; See Exhibit 5)

J. Ft. Walton Beach Medical Center. This debt is not the subject of a bonafide dispute. Mr. Lopez did understand from the doctor that the items should be covered by his health insurance, however, Mr. Lopez did not get approval from his insurance company prior to having the procedure done, and does not dispute the debt. Ultimately, procedures not approved beforehand by the health insurance company are the responsibility of the patient, and Mr. Lopez understands this, which is why he listed Ft. Walton Beach Medical Center as a creditor in these proceedings. See Lopez Declaration, Page 5: Para. 20).

K. Household Bank. Mr. Lopez made minimum payments to this creditor, which were necessary for this credit card account to remaining good standing. Payments were made for debts incurred in the ordinary course of business.. (See Response to Moving Party Separate Statement of Undisputed Facts in Support of Motion by Alleged Debtor for Summary Judgment, Page 11, Items 85 through 90; See Lopez Declaration, Page 5: Para. 21; See Exhibit 6).

L. Kelly Plantation Owners Association. This creditor is a homeowner association for the Lopez family residence. The quarterly assessment was paid in the ordinary course of business, made in accord with ordinary business terms. Failure to make these payments would result in collection and/or other legal action against the Lopez family. Further, payments to this creditor were often made from Mrs. Lopez's checking account. (See Response to Moving Party Separate Statement of Undisputed Facts in Support of Motion by Alleged Debtor for Summary Judgment, Page 11, Item 91; Page 12, Items 92 through 95; See Exhibit 7.)

M. Northwest Florida Daily News. This creditor was listed as a petitioning creditor by Stanly and Keehn. In fact, they were a creditor of Mr. Lopez's at the time of the involuntary filing, but have been paid in the ordinary course of business. Now Stanly and Keehn state that Northwest Florida Daily News is not a creditor, for the purposes of their current argument. Payments made to this creditor were made in accordance with the ordinary course of business, in accordance with normal business terms. . (See Response to Moving Party Separate Statement of Undisputed Facts in Support of Motion by Alleged Debtor for Summary Judgment, Page 12, Items 96 through 100; See Lopez Declaration, Page 5: Para. 22).

N. Okaloosa Gas District. Stanly claims that this creditor received both pre-petition preferences and voidable post-petition transfers. As to pre-petition preferences, this creditor received payments for debts incurred in the ordinary cource of financial affairs, in accordance with ordinary business terms. Failure to make payments to this creditor would have resulted in cancellation of utility services to the Lopez's primary residence. As to post-petition payments, payments were made in exchange for continued utility services. (See Response to Moving Party Separate Statement of Undisputed Facts in Support of Motion by Alleged Debtor for Summary Judgment, Page 13, Items 101 through 111; See Exhibit 7; See Exhbit 9).

O. Progressive Insurance. Stanly claims that this creditor was in fact not a creditor as of June 30, 2005. His reasoning for this is that because the existing auto policy was in effect at that time, and not up for renewal until August 8, 2005, Progressive was not a creditor. This is false. Progressive Insurance, like most other auto insurance providers, allows for monthly payments to keep the policy in force. Mr. Lopez, in fact, had a payment due to Progressive at the time of the involuntary filing. . (See Response to Moving Party Separate Statement of Undisputed Facts in Support of Motion by Alleged Debtor for Summary Judgment, Page 14, Items 112 through 115; See Exhibit 10).

P. Citibank/Quicken Platinum Card. Stanly claims that this creditor received both pre-petition preferences and post-petition transfers. In fact, pre-petition payments were for debts incurred in the ordinary course of business, and were made in the ordinary course of business. Note that the payment amounts were minimum payments; small payments required to keep this credit card in good standing. . (See Response to Moving Party Separate Statement of Undisputed Facts in Support of Motion by Alleged Debtor for Summary Judgment, Page 14, Items 116 through 119).

Q. Alan Stanly. Most astonishing is Stanly's assertion that his is not even a creditor himself (when determining the number in toto) because he is an insider. Since Lopez is an indidivual, the only way Stanly could be an insider is to be a general partner of Lopez on June 30, 2005 or be in control of Mr. Lopez. It is clear that Stanly is trying to be in total control of Mr. Lopez but he is obviously not and is obviously not an insider.

R. Texaco/Shell. This creditor provides a gas credit card to Mr. Lopez. Pre-petition payments were made in payment of debts incurred in the ordinary course of business, and were made in accordance with ordinary business terms. Continued payments to this creditor are required to maintain the services provided, as well as to maintain Mr. Lopez's credit privileges and credit standing. . (See Response to Moving Party Separate Statement of Undisputed Facts in Support of Motion by Alleged Debtor for Summary Judgment, Page 15, Items 123 through 130; Page 16, Item 131; See Exhibit 11).

S. Union Bank. In mid-2004, Mr. Lopez and Union Bank executed a settlement agreement whereby Mr. Lopez agreed to pay Union Bank the sum of $15,000 in monthly installments, which were comprised of 12 monthly payments of $500, followed by 9 monthly payments of $1,000. As of June 30, 2005, there was an outstanding balance of approximately $4,000. This has been subsequently paid, in exchange for the release of Mr. Lopez from any claims from its lawsuit against Mr. Lopez. This debt and related payments were in accord with the settlement agreement reached between Mr. Lopez and Union Bank, and were made in the ordinary course of business, in accord with the terms specified in the settlement agreement. . (See Response to Moving Party Separate Statement of Undisputed Facts in Support of Motion by Alleged Debtor for Summary Judgment, Page 18, Items 148 through 157, Page 19, Items 158 through 163).

T. Valley Forge Life Insurance. This is an insurance company that issued a 20-year term policy for Mr. Lopez. This is a long term obligation that requires payment or else the policy will be canceled. If the balance as of June 30 was indeed $0 for the 2005 year, that does not mean that Mr. Lopez is not obligated to make the successive annual payments, and thus he listed Valley Forge as a creditor. Mrs. Lopez is the beneficiary of this life insurance policy on Mr. Lopez.. (See Response to Moving Party Separate Statement of Undisputed Facts in Support of Motion by Alleged Debtor for Summary Judgment, Page 16, Items 132 through 137; See Lopez Declaration, Page 6: Para. 23).

U. Verizon Wireless. This creditor provided cell phone service for Mr. Lopez. Although at one time the amount owed was disputed by Mr. Lopez, it was subsequently straightened out and Verizon was paid in full. Payment to Verizon was on a monthly basis and was required in order to receive continued cell phone service. Payments made to

Verizon were either paid directly by Mr. Lopez or by Mr. Lopez's employer, Noveon Systems, Inc. (See Response to Moving Party Separate Statement of Undisputed Facts in Support of Motion by Alleged Debtor for Summary Judgment, Page 17, Items 138 through 141; See Lopez Declaration, Page 6: Para. 24).

V. Wayne Wise. Mr. Wise and Mr. Lopez executed a promissory note in June of 2004. The original terms of that note required repayment in one year. In May of 2005, before the payment was due, Mr. Wise agreed to extend the note indefinitely, with the agreement that the note would be paid in full upon the successful sale of the Lopez's primary residence. Mr. Lopez and Mrs. Lopez offered to pay Mr. Wise one year's interest, or $900, as part of this oral agreement. That payment was made, by Mrs. Lopez, in fulfillment of that obligation. . (See Response to Moving Party Separate Statement of Undisputed Facts in Support of Motion by Alleged Debtor for Summary Judgment, Page 17, Items 142 through 147; See Lopez Declaration, Page 6: Para. 25).

In summary,

Creditor Listed in Lopez's Answer	Included in §303(b)(2) Count
ALLSTATE FLORIDIAN (Homeowners Insurance)	yes
AMERICAN EXPRESS (Credit Card)	yes
AMERICAN HOME SHIELD (Insurance)	yes
BANK OF AMERICA (Credit Card)	yes
BANKCARD SERVICES (Credit Card)	yes
CINGULAR WIRELESS (Mobile Phone)	yes
CITI CARDS (Credit Card)	yes

COASTAL COMMUNITY INSURANCE (Property Insurance)	yes
COX COMMUNICATIONS (Television and Internet)	yes
FT. WALTON BEACH MEDICAL CENTER (Emergency Room/Medical Services)	yes
HOUSEHOLD BANK / HSBC (Credit Card)	yes
KELLY PLANTATION OWNERS ASSOCIATION (Homeowners Association)	yes
NORTHWEST FLORIDA DAILY NEWS (Newspaper)	yes
OKALOOSA GAS DISTRICT (Utilities)	yes
PROGRESSIVE INSURANCE (Auto Insurance)	yes
QUICKEN PLATINUM CARD (Credit Card)	yes
STANLY, ALAN (Judgment Creditor)	yes
TEXACO/SHELL (Gasoline Credit Card)	yes
UNION BANK OF CALIFORNIA (Settlement)	yes
VALLEY FORGE LIFE INSURANCE (Life Insurance)	yes
VERIZON WIRELESS (Mobile Phone)	yes
WISE, WAYNE (Personal Loan)	yes

IV.

THERE ARE INSUFFICIENT PETITIONING CREDITORS AND THEREFORE THIS CASE MUST BE DISMISSED

At the time the Involuntary Petition was filed, June 30, 2005, Lopez had at least 22 creditors. He attested to this fact on September 7, 2005 with his Answer. Section 303 of the bankruptcy code therefore requires that there be at least three petitioning creditors.

Section 303 states:

> (b) An involuntary case against a person is commenced by the filing with the bankruptcy court of a petition under chapter 7 or 11 of this title—
>
> (1) by three or more entities, each of which is either a holder of a claim against such person that is not contingent as to liability or the subject of a bona fide dispute as to liability or amount, or an indenture trustee representing such a holder, if such noncontingent, undisputed claims aggregate at least $12,300 more than the value of any lien on property of the debtor securing such claims held by the holders of such claims;
>
> (2) if there are fewer than 12 such holders, excluding any employee or insider of such person and any transferee of a transfer that is voidable under section 544, 545, 547, 548, 549, or 724(a) of this title, by one or more of such holders that hold in the aggregate at least $10,000 . . .

Seeing that Lopez clearly had more than 12 creditors and therefore three petitioning creditors are required, Stanly began a desperate attempt to find more petitioning creditors. On or about December 20, 2005, more than two months after the first set of subpoenas were served by Stanly to creditors of Lopez (and almost six months after the petition was filed), Northwest Daily News, with a purported claim of $69.30 was induced by Stanly or his counsel to join the involuntary petition. Eight days later Alternative Resolution Center, with a purported claim of $1,575.00, joined as well.

Lopez owed no debt to Alternative Resolution Center on June 30, 2005, see Declaration of Steven Davis, par. 3.

Therefore there is, at most, only two petitioning creditors in the face of well more than 12 total creditors and this involuntary case must be dismissed.

The requirement that, in the presence of 12 or more creditors, at least 3 must petition before an order for relief issues is not jurisdictional, but is an **absolute defense** to the issuance of an order for relief. *In Re Kidwell*, (Bkrtcy E.D. Cal. 1993) 158 B.R. 203. If no more petitioning creditors join this case, it is Stanly's **burden** to prove that the alleged debtor has fewer than 12 creditors. *In Re Smith* (Bkrtcy. N.D.Ga. 1999) 243 B.R. 169, 183.

V.

CONCLUSION

Alleged Debtor prays that this court grant him summary judgment and dismiss this case, and for other orders which are just.

Dated: June 2006

Respectfully submitted

By: ______________________ cHH

M. Jonathan Hayes
Attorney for Alleged Debtor Francis Lopez

Signature by the attorney constitutes a certification under Fed. R. Bankr. P. 9011 that the relief provided by the order is the relief granted by the court.

Submitted by:

By: ______________________ cHH

M. Jonathan Hayes
Attorney for Francis J. Lopez

PROOF OF SERVICE

I, Cassidy Hayes, declare:

I am a resident of the State of California and over the age of eighteen years, and not a party to the within action; my business address is 21800 Oxnard St., Suite 840, Woodland Hills, CA 91367. On June 12, 2006, I served the within documents:

OPPOSITION OF ALLEGED DEBTOR FOR SUMMARY JUDGMENT

by transmitting via facsimile the document(s) listed above to the fax number(s) set forth below on this date before 5:00 p.m.

X by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at Los Angeles, California addressed as set forth below.

.. by causing personal delivery by of the document(s) listed above to the person(s) at the address(es) set forth below.

.. by placing the document(s) listed above in a sealed ______________ envelope and affixing a pre-paid air bill, and causing the envelope to be delivered to a ______________ agent for delivery

.. by personally delivering the document(s) listed above to the person(s) at the address(es) set forth below.

L. Scott Keehn
Sarah H. Lanham
ROBBINS & KEEHN, APC
530 B Street, Suite 2400
San Diego, CA 92101
AND BY EMAIL

I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Executed on June 12, 2006, at Los Angeles, California.

[signature]

Cassidy Hayes

DOCKET NUMBER 65

Zlp

M. Jonathan Hayes (Bar No. 90388)
Law Office of M. Jonathan Hayes
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Attorneys for Alleged Debtor Francis Lopez

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UNITED STATES BANKRUPTCY COURT

SOUTHERN DISTRICT OF CALIFORNIA

SAN DIEGO DIVISION

In Re: FRANCIS J. LOPEZ, Alleged Debtor	CASE NO. 05-05926-PBINV Involuntary Chapter 7 **RESPONSE TO MOVING PARTY SEPARATE STATEMENT OF UNDISPUTED FACTS IN SUPPORT OF MOTION BY ALLEGED DEBTOR FOR SUMMARY JUDGMENT** Date: June 26, 2006 Time: 2:00 p.m. Ctrm: 4

TO THE HONORABLE PETER W. BOWIE, UNITED STATES BANKRUPTCY JUDGE, TO PETITIONING CREDITORS ALAN STANLY, NORTHWEST FLORIDA DAILY NEWS, ALTERNATIVE RESOLUTION CENTER:

COMES NOW alleged debtor Francis J. Lopez and submits the following Statement of Undisputed Facts in Support of alleged debtor's Motion for Summary Judgment ("Motion"). Alleged debtor submits that the following facts establish that there are no material facts in issue and that the request for summary judgment in this case should be granted and the case dismissed:

FACT	**EVIDENCE**
CASE FILING AND JURISDICTION	
1. This case was commenced with an involuntary petition on June 30, 2005.	Agree that this fact is undisputed
2. This Court has jurisdiction under the involuntary petition.	Agree that this court has jurisdiction.
GENERAL AND BACKGROUND FACTS	
3. Francis and Madeleine Lopez were married in 1991.	Agree that this fact is undisputed
4. Francis and Madeleine Lopez did not enter into a prenupital agreement prior to their marriage.	Agree that this fact is undisputed
5. Francis and Madeleine Lopez have maintained the same joint checking account with Compass Bank since 2004.	Disputed as to date. This account was opened in 2003. (See Lopez Declaration, Page 1: Para. 2)
6. According to Lopez's custom and practice, consistently applied, when he placed a handwritten notation on a bill, that indicates that the bill has in fact been paid.	Disputed as to "handwritten notation". If the notation includes payment information, undisputed. (See Lopez Declaration, Page 2: Para. 3)
7. Noveon Systems is a Delaware corporation formed in may or June of 2003.	Agree that this fact is undisputed
8. Lopez first became employed by Noveon Systems in the latter half of July, 2003.	Agree that this fact is undisputed
9. Lopez was an officer of Noveon Systems from the time of its formation until late 2004 or sometime in mid 2005, at which point he resigned based on advice he received from attorneys.	Agree that this fact is undisputed
10. Lopez has served as a director of Noveon Systems from or about the time of its formation, and cannot recall if he has ever	Agree that this fact is undisputed

resigned that position.	
11. Lopez provides services to Noveon in a sales capacity and customer service liaison for scheduling work and related services.	Agree that this fact is undisputed
12. Current compensation from Noveon Systems consists of a profit sharing plan in which he would receive a percentage of profits.	Agree that this fact is undisputed
13. Lopez received less than $12,500 in license fees from Noveon from January to April 27, 2006.	Agree that this fact is undisputed
14. Lopez has received less than $50,000 dollars in aggregate compensation in all categories from Noveon since its inception through and including April 27, 2006.	Agree that this fact is undisputed
15. As of April 27, 2006, Lopez has received no profit sharing payments from Noveon (ever).	Agree that this fact is undisputed
16. In the early summer of 2005, Lopez became licensed to sell life, health, and health insurance annuities and variable annuities in the State of Florida. He utilized that license in a couple of ventures, but quickly abandoned pursuit of that business activity.	Disputed. Lopez has not abandoned that business activity. (See Lopez Declaration, Page 2: Para. 4)
17. Francis Lopez's income from all sources in the calendar year 2005 was less than $50,000.	Agree that this fact is undisputed
18. Lopez is the author of the document entitled "Francis Lopez Exhibit A List of Creditors."* *Hereinafter sometimes referred to as the "Creditor List" or "List of Creditors."	Agree that this fact is undisputed
LOPEZ'S RESIDENCE HAS APPARENT EQUITY OF $405,000.00	
19. Lopez purchased his residence at 310 San Myrtle Trail in the first half of 2003 for the purchase price of $745,000.	Deny. Purchased by Francis and Madeleine Lopez, as husband and wife, and held as tenancy by the entirety. (See Lopez Declaration, Page 2: Para. 5).
20. The current amount of the obligations secured by the residence are approximately $750,000.	Deny. Secured obligations are in excess of $800,000. (See Lopez Declaration, Page 2: Para. 6).
21. The current value of the residence is	Disputed. That is the "for sale" price.

$1,295,000.00.	The actual price at sale is estimated at between $1.1 million and $1.2 million. (See Lopez Declaration, Page 2: Para. 7).
22. The residence is encumbered by a mortgage to Lehman Brothers Bank in the amount of $750,000.00.	Agree that this fact is undisputed
23. The residence is encumbered by a Home Equity Credit Line in the amount of $125,000.00, of which at least $65,000 has been drawn.	Agree that this fact is undisputed
24. Lopez is entitled to a minimum homestead exemption in the amount of $75,000.00.	Deny, the home is owned as tenancy by the entirety and is therefore completely exempt. (See Lopez Declaration, Page 2: Para. 8)
25. The net apparent equity in the residence to an estate is $405,000.00.	Deny, the equity in the residence, after sales commission and taxes, is closer to $260,000. The residence is not owned by Lopez individually and is thus not property of the bankruptcy estate. (See Lopez Declaration, Page 2: Para. 9)
26. Other than his residence, Lopez has no assets of any significant value (more than $10,000 equity).	Deny, the residence is not an asset of Lopez. Lopez also owns intellectual property that may be worth in excess of $10,000. (See Lopez Declaration, Page 3: Para. 10)
THE TOTAL FORESEEABLE CLAIMS AGAINST THE LOPEZ ESTATE ARE AT LEAST $2,595,800.00	
27. Stanly holds claims against Lopez that total in excess of $2,435,800.00.	Deny, See Lopez Declaration, Page 3: Para. 11
28. Frederick Lopez holds claims against Lopez in the amount of $55,000.	Deny, See Lopez Declaration, Page 3: Para. 12
29. Other entities hold claims against Lopez of approximately $105,000.00.	
LOPEZ OWES HIS FATHER – FREDERICK LOPEZ – $55,000 ($20,000 PRE-PETITION / $35,000 POST-PETITION BORROWING)	
30. As of May 9, 2005, Lopez owed his father – Frederick Lopez - $20,000 on account of money that Lopez had borrowed from him.	Agree that this fact is undisputed
31. As of June 30, 2005, none of the monies that Lopez had borrowed from his father had been repaid.	Agree that this fact is undisputed

32. Since June 30, 2005, Lopez has borrowed an additional sum of $35,000 from his father.	Deny. The $35,000 figure includes amounts previously borrowed. (See Lopez Declaration, Page 3: Para. 13)
33. Lopez did not include his father as a creditor on Exhibit A to his Answer (Lopez Depo. Exhibit 17) because he understood that it was not appropriate to include relatives on that list.	Agree that this fact is undisputed
LOPEZ'S ATTORNEY WILL HAVE POST-PETITION GAP CLAIMS	
34. To the best of his recollection (as refreshed by his review of available documents), Lopez has not paid his attorney of record in this case anything since February 5, 2006.	Agree that this fact is undisputed
ALLSTATE FLORIDIAN WAS NOT A CREDITOR ON JUNE 30, 2005, BECAUSE THE PREMIUM DUE FOR THE 7/16/04 THROUGH 7/16/05 PERIOD WAS FULLY PAID ON MARCH 16, 2005	
35. Lopez has produced any and all documents evidencing any and all payments he made to Allstate Floridian (identified as one of his creditors) during the time period of June 30, 2005 through April 27, 2006.	Deny, documents in Lopez's possession at the time of the request were produced (See Lopez Declaration, Page 6: Para 26)
36. Lopez claims to have been indebted to Allstate Floridian (insurance company) in the approximate amount of $1,900 as of June 30, 2005.	Agree that this fact is undisputed
37. However, as of June 30, 2005, Lopez was not indebted to Allstate Floridian indemnity company in any amount because the premium period then in effect (7/16/04 to 7/16/05), payments for the prior period would have been completed before June 30, 2005, and the obligation to pay for the upcoming period would not begin to accrue until July 15, 2005, with the first payment due in September of that year.	Deny. Payments for the 7/2004 to 7/2005 period were handled from an escrow account with the mortgage company. On April 27, 2005, the premium was increased from $1907.50 per annum to $2900.00 per annum. As of the petition date, there was a balance owing to this creditor. (See Exhibit 2, Notice from Allstate Floridian;, See Lopez Declaration, Page 4: Para 14)
38. The coverage period for the insurance policy maintained by Lopez through Allstate Floridian Indemnity Company ran from 7/16/04 to 7/16/05.	Deny. There were two coverage periods, for the period 7/2004 through 7/2005, and for 7/2005 through 7/2006. (See Lopez Declaration, Page 4: Para. 14)

39. The final installment for the premium for that period became due on November 21, 2004.	Deny. Allstate Floridian allowed for payments by month, which were exercised by Mr. Lopez. These payments extended into 2005 (See Exhibit 2A; also see Lopez Declaration, Page 4: Para. 15)
40. The final installment was not timely paid, the policy was cancelled for nonpayment of the premium on March 1, 2005 (Allstate 014), and subsequently paid, and reinstated without a lapse of coverage on March 16, 2005 (Allstate 018).	Deny. The policy was never cancelled, though a cancellation notice was sent. Funds were received late out of the mortgage company's escrow account, but payment was received. (See Exhibit 2B)
AMERICAN EXPRESS WAS NOT A CREDITOR ON JUNE 30, 2005	
41. Lopez has produced any and all documents evidencing any and all payments he made to American Express (identified as one of his creditors) during the time period of June 30, 2005 through April 27, 2006.	Deny, documents in Lopez's possession at the time of the request were produced (See Lopez Declaration, Page 6: Para 26)
42. Lopez asserts that he has an account with American Express (3783949802283007) upon which he owed $22,000 as of June 30, 2005.	Agree that this fact is undisputed
43. However, American Express indicates that there was no amount due and owing from Lopez on June 30, 2005.	Deny. Mr. Keehn made this assertion to Mr. Lopez during his depo, but did not have anything in writing from American Express confirming that assertion, and Mr. Lopez's correspondence with American Express confirms the debt. Also, Mr. Lopez has correspondence from American Express indicating amounts owing on the various credit card accounts for which Mr. Lopez was primary cardholder and guarantor. (See Exhibit 3, Letters from American Express). (See Lopez Declaration, Page 4: Para. 16; See Exhibit 14)
AMERICAN HOME SHIELD WAS NOT A CREDITOR ON JUNE 30, 2005	
44. Lopez asserts that he was indebted to American Home Shield in the amount of $128.00 on June 30, 2005.	Agree that this fact is undisputed
45. Lopez has produced any and all documents evidencing any and all payments he made to American Home Shield (identified as one of his creditors) during the time period of June 30, 2005 through April 27, 2006.	Deny, documents in Lopez's possession at the time of the request were produced (See Lopez Declaration, Page 6: Para 26)

46. The Lopez contract with American Home Shield that was in place on the Petition Date (06/30/05) began on July 16, 2004 and did not expire until July 16, 2005.	Agree that this fact is undisputed
BANK OF AMERICA RECEIVED BOTH PRE-PETITION PREFERENCE PAYMENTS AND VOIDABLE POST-PETITION PAYMENTS	
47. Lopez asserts that as of June 30, 2005, he was indebted to Bank of America in the approximate amount of $2,386.	Agree that this fact is undisputed
48. Lopez has produced any and all documents evidencing any and all payments he made to Bank of America (identified as one of his creditors) during the time period of June 30, 2005 through April 27, 2006.	Deny, documents in Lopez's possession at the time of the request were produced (See Lopez Declaration, Page 6: Para 26)
49. On May 6, 2005, Lopez transferred $50.00 on account of the Bank of America obligation.	Deny as to the term "transferred". Agreement with the term "paid". (See Lopez Declaration, Page 7: Para. 27 through 28).
50. On or about May 17, 2005, Lopez caused $50.00 to be paid to Bank of America on account of the pre-petition obligation.	Agree that this fact is undisputed
51. On June 22, 2005, Lopez paid Bank of America $54.00 dollars on account of the debt he owed to them as identified on his "list of creditors".	Agree that this fact is undisputed
52. On June 24, 2005, Lopez transferred $54.00 to Bank of America on account of this debt.	Deny as to the term "transferred". Agreement with the term "paid". (See Lopez Declaration, Page 7: Para. 27 through 28).
53. On June 28, 2005, Lopez transferred $54.00 to Bank of America on account of his pre-petition debt.	Deny as to the term "transferred". Agreement with the term "paid". (See Lopez Declaration, Page 7: Para. 27 through 28).
54. On June 28, 2005, Bank of America received a payment of $54.00 on account of the obligation reflected on his "list of creditors".	Agree that this fact is undisputed
55. At some point in the month of June, but before June 30, 2005, Lopez made a payment of $54.00 on account of that obligation.	Agree that this fact is undisputed

56. On August 11, 2005, Lopez transferred $292.50 to Bank of America on account of this pre-petition obligation.	Deny as to the term "transferred". Deny, payment was made by Mrs. Lopez, using her own checking account. (See Exhibit 4, Payment to Bank of America).
BANK CARD SERVICES RECEIVED PRE-PETITION PREFERENCE PAYMENTS AND ITS ACCOUNT WAS SUBJECT TO A BONA FIDE DISPUTE	
57. Lopez was indebted to Bank Card Services in some amount as of June 30, 2005.	Agree that this fact is undisputed
58. Lopez has produced any and all documents evidencing any and all payments he made to Bank Card Services (identified as one of his creditors) during the time period of June 30, 2005 through April 27, 2006.	Deny, documents in Lopez's possession at the time of the request were produced (See Lopez Declaration, Page 6: Para 26)
59. Bank Card Services received payment on account during the period of April 1 through June 30, 2005.	Agree that this fact is undisputed
60. However, Lopez has a bonafide dispute over this creditor's unilateral position of late charges on the account because the account mechanism required an automatic deduction for at least the minimum amount due on the account. This account is subject to a bonafide dispute.	Deny, the misunderstanding was resolved to the mutual satisfaction of both Mr. Lopez and the creditor. (See Lopez Declaration, Page 4: Para. 17).
CINGULAR RECEIVED EITHER A PRE-PETITION PREFERENCE PAYMENT OR A VOIDABLE POST-PETITION TRANSFER	
61. Lopez has produced any and all documents evidencing any and all payments he made to Cingular Wireless (identified as one of his creditors) during the time period of June 30, 2005 through April 27, 2006.	Deny, documents in Lopez's possession at the time of the request were produced (See Lopez Declaration, Page 6: Para 26)
62. On June 19, 2005, Lopez owed Cingular $313.40.	Agree that this fact is undisputed
63. As of June 19, 2005, Lopez was past due in obligations owed to Cingular in the amount of $151.81.	Agree that this fact is undisputed
64. At some time between June 19, 2005 and January 10, 2006, the obligation owed to Cingular as of June 19, 2005, was paid in full.	Agreed. It was paid in full by Noveon Systems, Inc. The primary purpose for this cell phone was for business. See Exhibit 13.
CITICARD RECEIVED PRE-PETITION PREFERENCE PAYMENTS	

65. Lopez has produced any and all documents evidencing any and all payments he made to Citi Cards (identified as one of his creditors) during the time period of June 30, 2005 through April 27, 2006.	Deny, documents in Lopez's possession at the time of the request were produced (See Lopez Declaration, Page 6: Para 26)
66. On April 18, 2005, Lopez transferred $379.00 to Citicard on account of the pre-petition obligation.	Deny as to the term "transferred". Agreement with the term "paid". (See Lopez Declaration, Page 7: Para. 27 through 28; Page 4: Para. 18).
67. On April 19, 2005, Lopez transferred $379.00 to Citibank.	Deny as to the term "transferred". Agreement with the term "paid". (See Lopez Declaration, Page 7: Para. 27 through 28; Page 4: Para. 18).
68. On May 18, 2005, Lopez transferred $379.00 to Citicard on account of the pre-petition obligation.	Deny as to the term "transferred". Agreement with the term "paid". (See Lopez Declaration, Page 7: Para. 27 through 28; Page 4: Para. 18).
69. On May 19, 2005, Lopez transferred $379.00 to Citicard on account of the pre-petition debt.	Deny as to the term "transferred". Agreement with the term "paid". (See Lopez Declaration, Page 7: Para. 27 through 28; Page 4: Para. 18).
70. On June 18, 2005, Lopez transferred $379.00 to Citicard on account of the pre-petition obligation.	Deny as to the term "transferred". Agreement with the term "paid". (See Lopez Declaration, Page 7: Para. 27 through 28; Page 4: Para. 18).
71. On June 20, 2005, Lopez transferred $379.00 to Citibank.	Deny as to the term "transferred". Agreement with the term "paid". (See Lopez Declaration, Page 7: Para. 27 through 28; Page 4: Para. 18).
72. On June 30, 2005, Lopez was indebted to Citi Card/AA Advantage Card in the amount of $32,136.57.	Agree that this fact is undisputed
COASTAL COMMUNITY INSURANCE WAS NOT A CREDITOR ON JUNE 30, 2005	
73. The creditor identified as Coastal Community Insurance is the insurance company that provides flood insurance for the Lopez residence.	Agree that this fact is undisputed
74. Lopez has produced any and all documents evidencing any and all payments he made to Coastal Community Insurance (identified as one of his creditors) during the time period of June 30, 2005 through April 27, 2006.	Deny, documents in Lopez's possession at the time of the request were produced (See Lopez Declaration, Page 6: Para 26)

75. An insurance policy was issued by Coastal Community Insurance for 7/30/04 – 7/30/05.	Agree that this fact is undisputed
76. By August 9, 2004, that premium had been paid in full.	
77. The premiums for the flood insurance policy provided by Coastal Community Insurance are paid by Lopez's lender from an escrow account, and are not paid by Francis or Madeleine Lopez.	Agree, although the ultimate responsibility for the payment out of any escrow account belongs to me and/or my wife. (See Lopez Declaration, Page 5: Para. 19)
78. As of June 30, 2005, Lopez was not indebted to Coastal Community Insurance because the insurance for the period beginning July 30, 2004 and ending July 30, 2005, had been paid, and the next coverage period – July 30, 2005 through July 30, 2006 – was not due, owing, or accrued.	
COX COMMUNICATIONS RECEIVED A VOIDABLE POST-PETITION TRANSFER	
79. As of June 30, 2005, Lopez was indebted to Cox Communications in the amount of $112.	Agree that this fact is undisputed
80. Lopez has produced any and all documents evidencing any and all payments he made to Cox Communications (identified as one of his creditors) during the time period of June 30, 2005 through April 27, 2006.	Deny, documents in Lopez's possession at the time of the request were produced (See Lopez Declaration, Page 6: Para 26)
81. At some point after June 30, 2005, the entire amount of the pre-petition obligation owed to Cox Communications was paid in full by Lopez.	Deny as to payment by Lopez. The payment was made by Noveon Systems, Inc., from its checking account. (See Exhibit 5, Check stub for Cox Communications)
THE CLAIM OF FT. WALTON BEACH MEDICAL CENTER IS THE SUBJECT OF A BONA FIDE DISPUTE	
82. Lopez has produced any and all documents evidencing any and all payments he made to Fort Walton Beach Medical Center (identified as one of his creditors) during the time period of June 30, 2005 through April 27, 2006.	Deny, documents in Lopez's possession at the time of the request were produced (See Lopez Declaration, Page 7: 4-13)
83. On June 30, 2005, Lopez was indebted to the Fort Walton Beach Medical Center in the approximate amount of $1,600.	Agree that this fact is undisputed

84. However, this obligation is the subject of a bonafide dispute as to Lopez's liability. The dispute arises from the fact that the admitting doctor – and an agent of the creditor – affirmatively represented to Lopez that the treatments being made would be covered by his insurance, when in fact they were not. Lopez's nonpayment of the bill arises from this dispute.	Deny. While the doctor did suggest to Lopez that the procedure should be covered, it in fact was not, and after checking with his insurance company, Lopez acknowledges that the bill needs to be paid. Lopez did not get pre-approval for the procedure from the insurance company. (See Lopez Declaration, Page 5: Para. 20).
HOUSEHOLD BANK RECEIVED PRE-PETITION PREFERENCE PAYMENTS	
85. On June 30, 2006, Lopez was indebted to Household Bank/ HSBC in the approximate amount of $5,000.	Agree that this fact is undisputed
86. Lopez has produced any and all documents evidencing any and all payments he made to Household Bank/ HSBC (identified as one of his creditors) during the time period of June 30, 2005 through April 27, 2006.	Deny, documents in Lopez's possession at the time of the request were produced (See Lopez Declaration, Page 6: Para 26)
87. On or about May 16, 2005, Lopez made a payment on account of the Household Bank obligation in the amount of $50.	Agree that this fact is undisputed
88. On May 17, 2005, Lopez transferred $100.00 to Household Bank on of his antecedent debt.	Deny as to the use of the term "transferred". Agreement with the term "paid". Mr. Lopez's records show a payment of $50, not $100. (See Exhibit 6)
89. The May 17, 2005 payment to Household Bank was $223.91 less than the minimum payment due in that cycle.	Deny. Household Bank told Mr. Lopez that a minimum payment of $50 would suffice. (See Lopez Declaration, Page 5: Para. 21).
90. Other payments were also made to Household Bank on account of the pre-petition obligation in the months of April and June, 2005.	Agree that this fact is undisputed
KELLY PLANTATION OWNERS ASSOCIATION RECEIVED A VOIDABLE POST-PETITION TRANSFER	
91. Lopez has produced any and all documents evidencing any and all payments he made to Kelly Plantation Owners Association (identified as one of his creditors) during the time period of June 30, 2005 through April 27, 2006.	Deny, documents in Lopez's possession at the time of the request were produced (See Lopez Declaration, Page 6: Para 26)

92. On June 30, 2005, Lopez was indebted to the Kelly Plantation Owners Association in the amount of $550 on account of home owner association dues.	Agree that this fact is undisputed
93. These association bills are generated quarterly, and Lopez has no control over the assessments made.	Agree that this fact is undisputed
94. The obligation owed to Kelly Plantation Owners Association on June 30, 2005, has subsequently been paid by Lopez.	Deny. This was paid by Madeleine Lopez, from her checking account.(See Exhibit 7, payment to Kelly Plantation)
95. At some point in time after June 30, 2005, but before December 12, 2005, that obligation had been paid in full.	Agree that this fact is undisputed
NORTHWEST FLORIDA DAILY NEWS WAS A CREDITOR ON JUNE 30, 2005, BECAUSE ITS SUBSCRIPTION HAS BEEN PRE-PAID [IT ALSO RECEIVED PRE-PETITION TRANSFERS]	
96. Lopez has produced any and all documents evidencing any and all payments he made to Northwest Florida Daily News (identified as one of his creditors) during the time period of June 30, 2005 through April 27, 2006.	Deny, documents in Lopez's possession at the time of the request were produced (See Lopez Declaration, Page 6: Para 26)
97. On May 17, 2005, Lopez paid the Northwest Florida Daily News the sum of $97.39. The payment included past due amounts plus an advance payment for the next three months.	Agree that this fact is undisputed
98. Of the $97.39 payment to the Northwest Florida Daily News made May 17, 2005, approximately $55.39 was made on account of the past due obligation, and the remaining $42.00 was an advance payment for the next three months.	Agree that this fact is undisputed
99. When completing his list of creditors (Lopez Depo. exhibit 17) Lopez was only estimating an amount due to the Northwest Florida Daily News.	Deny. The amount was for a classified ad run by Northwest Florida Daily News that was subsequently paid by Lopez. (See Lopez Declaration, Page 5: Para. 22).
100. If any amount was in fact owed to Northwest Florida Daily News, it was paid in full post-petition.	Agree that this fact is undisputed
OKALOOSA GAS DISTRICT RECEIVED BOTH PRE-PETITION PREFERENCES AND VOIDABLE POST-PETITION TRANSFERS	

101. Lopez has produced any and all documents evidencing any and all payments he made to Okaloosa Gas District (identified as one of his creditors) during the time period of June 30, 2005 through April 27, 2006.	Deny, documents in Lopez's possession at the time of the request were produced (See Lopez Declaration, Page 6: Para 26)
102. On May 3, 2005, Lopez transferred $171.70 to Okaloosa Gas District.	Deny as to the term "transferred". Agreement with the term "paid". (See Lopez Declaration, Page 7: Para. 27 through 28).
103. As of May 19, 2005, Lopez was indebted to the Okaloosa Gas District in the amount of $82.74 (the "5/19/05 obligation).	Agree that this fact is undisputed
104. On June 15, 2005, Lopez paid the sum of $82.74 on account of the 5/19/05 obligation; however the payment was untimely made and a late charge in the amount of $8.27 was imposed.	Agree that the payment was made; however, the payment was made on June 13, 2005, not June 15, 2005. Further, the payment was made by Mrs. Lopez from her own checking account. (See Exhibit 12)
105. As of June 30, 2005, Lopez was indebted to the Okaloosa Gas District in the amount of $44.33.	Agree that this fact is undisputed
106. On July 20, 2005, Lopez paid Okaloosa Gas District $44.33 on account of the pre-petition obligation.	Deny, payment was made by Mrs. Lopez from her own checking account (See Exhibit 7)
107. On July 20, 2005, the pre-petition obligation to Okaloosa Gas District was paid in full, however the payment was untimely and a late charge of $3.61 was imposed.	Agree that this fact is undisputed
108. On August 3, 2005, Lopez transferred $34.10 to the Okaloosa Gas District.	Deny as to the term "transferred". Agreement with the term "paid". (See Lopez Declaration, Page 7: Para. 27 through 28).
109. On September 29, 2005, Lopez transferred $46.38 to Okaloosa Gas District.	Deny as to the term "transferred". Agreement with the term "paid". (See Lopez Declaration, Page 7: Para. 27 through 28).
110. On November 3, 2005, the Okaloosa Gas District received a payment in the amount of $37.32 from Lopez on account of obligations identified in the "list of creditors".	Deny. This payment was made for the September - October 2005 billing. (See Exhibit 9)
111. Lopez general pays the Okaloosa Gas District bills from the Compass Bank checking account.	Agree that this fact is undisputed

PROGRESSIVE INSURANCE WAS NOT A CREDITOR ON JUNE 30, 2005	
112. As of June 30, 2005, Lopez claims to have been indebted to Progressive Insurance Company in the amount of $157.20.	Agree that this fact is undisputed
113. Lopez has produced any and all documents evidencing any and all payments he made to Progressive Insurance Company (identified as one of his creditors) during the time period of June 30, 2005 through April 27, 2006.	Deny, documents in Lopez's possession at the time of the request were produced (See Lopez Declaration, Page 6: Para 26)
114. However, as of June 30, 2005, no amount was actually due to Progressive Insurance Company, because the existing policy was in effect at that time and was not up for renewal until August 8, 2005.	Deny. Progressive Insurance charged in periodic installments, had sent Mr. Lopez a bills for the 2004-2005 as well as the 2005-2006 periods.. (See Exhibit 10)
115. However, had any amount been due and owing to Progressive Insurance Company on June 30, 2005, it was subsequently paid by Lopez.	Agree that this fact is undisputed
CITIBANK – ON THE QUICKEN PLATINUM CARD – RECEIVED BOTH PRE-PETITION PREFERENCES AND VOIDABLE POST-PETITION TRANSFERS	
116. Lopez has produced any and all documents evidencing any and all payments he made to Quicken Platinum Card (identified as one of his creditors) during the time period of June 30, 2005 through April 27, 2006.	Deny, documents in Lopez's possession at the time of the request were produced (See Lopez Declaration, Page 6: Para 26)
117. On May 2, 2005, Lopez transferred $32.09 to Quicken Platinum Card on account of the pre-petition obligation.	Deny as to the term "transferred". Agreement with the term "paid". (See Lopez Declaration, Page 7: Para. 27 through 28).
118. On June 27, 2005, Lopez transferred $18.00 to Quicken Platinum Card on account of the pre-petition obligation.	Deny as to the term "transferred". Agreement with the term "paid". (See Lopez Declaration, Page 7: Para. 27 through 28).
119. As of June 30, 2005, Lopez was indebted to Quicken Platinum Select in the approximate amount of $848. At some point between May 24, 2005, and June 23, 2005, Lopez paid $18 on the Quicken Platinum Select card obligation.	Agree that this fact is undisputed

120. On August 1, 2005, Lopez transferred $40.00 to Quicken Platinum Card on account of the pre-petition obligation.	Deny as to the term "transferred". Agreement with the term "paid". (See Lopez Declaration, Page 7: Para. 27 through 28).
STANLY IS AN INSIDER BECAUSE BOTH HE AND LOPEZ OWN 50% OF PRISM ADVANCE TECHNOLOGIES INC. ("PRISM")	
121. Lopez is a 50% shareholder of Prism.	Agree that Lopez was a 50% shareholder. Prism has ceased business operations and is bankrupt.
122. Alan Stanly is a 50% shareholder, officer and director of Prism.	Agree that Stanly was a 50% shareholder. Prism has ceased business operations and is bankrupt.
TEXACO RECEIVED BOTH PRE-PETITION PREFERENCES AND VOIDABLE POST-PETITION TRANSFERS	
123. Lopez has produced any and all documents evidencing any and all payments he made to Texaco/Shell (identified as one of his creditors) during the time period of June 30, 2005 through April 27, 2006.	Deny, documents in Lopez's possession at the time of the request were produced (See Lopez Declaration, Page 6: Para 26)
124. On April 4, 2005, Lopez transferred $40.00 to Texaco on account of the pre-petition debt.	Deny as to the term "transferred". Agreement with the term "paid". (See Lopez Declaration, Page 7: Para. 27 through 28).
125. On May 9, 2005, Lopez transferred $20.00 to Texaco on account of the pre-petition debt.	Deny as to the term "transferred". Agreement with the term "paid". (See Lopez Declaration, Page 7: Para. 27 through 28).
126. As of June 30, 2005, Lopez was indebted to Texaco/Shell Oil in the amount of $350.20.	Agree that this fact is undisputed
127. Texaco accepted payment on accounts from Lopez after June 30, 2005.	Agree that this fact is undisputed
128. On or about August 9, 2005, Lopez paid $50.99 on account of the pre-petition obligation.	Agree that this fact is undisputed
129. On September 26, 2005, Lopez made a payment to Texaco/Shell Oil in the amount of $10 on account of the pre-petition obligation.	Agree that this fact is undisputed
130. On October 24, 2005, Lopez made a payment to Texaco/Shell in the amount of 25.00 on account of the pre-petition obligation.	Agree that this fact is undisputed

131. The post-petition payments were made from the Compass Bank Checking account.	Deny, some payments were made by Madeleine Lopez from her separate checking account. (See Exhibit 11)
VALLEY FORGE LIFE INSURANCE IS NOT A CREDITOR BECAUSE LOPEZ NEVER OWED IT ANY MONEY (AND NEITHER DID HIS WIFE, MADELEINE) AS OF JUNE 30, 2005	
132. Lopez has asserted that as of June 30, 2005, he is indebted to Valley Forge Life Insurance company in the amount of "$0.00($486.00 per year)".	Agree that this fact is undisputed
133. Lopez has produced any and all documents evidencing any and all payments he made to Valley Forge Life Insurance (identified as one of his creditors) during the time period of June 30, 2005 through April 27, 2006.	Deny, documents in Lopez's possession at the time of the request were produced (See Lopez Declaration, Page 6: Para 26)
134. However, Lopez is not the account debtor for that obligation.	Deny, unclear that Mr. Lopez does not have a responsibility to pay the obligation. Mrs. Lopez is the beneficiary. (See Lopez Declaration, Page 6: Para 23)
135. Madeleine Lopez – the alleged debtor's spouse – not Lopez himself, is the account debtor obligated to pay the Valley Forge Life Insurance obligation.	Deny, unclear that Mr. Lopez does not have a responsibility to pay the obligation. Mrs. Lopez is the beneficiary. (See Lopez Declaration, Page 6: Para. 23).
136. Madeleine Lopez, the account debtor with respect to the Valley Forge Life Insurance Obligation, pays that obligation through Noveon Systems, Inc. (a corporation in which she is the sole owner/shareholder) of which she is the sole authorized signatory on its bank accounts, and signs all of its checks upon reviewing the same.	Agree that this fact is undisputed
137. There was no amount due to Valley Forge Life Insurance Company on June 30, 2006, because that annual premium had been paid at or shortly after February 5, 2005.	Deny. The policy is a 20 year term policy and the requirement is an annual fee to maintain the policy. (See Lopez Declaration, Page 6: Para. 23)
THE VERIZON CLAIM WAS DISPUTED AS OF JUNE 30, 2005, BUT SUBSEQUENTLY PAID BY A VOIDABLE POST-PETITION TRANSFER	

138. Lopez has produced any and all documents evidencing any and all payments he made to Verizon Wireless (identified as one of his creditors) during the time period of June 30, 2005 through April 27, 2006.	Deny, documents in Lopez's possession at the time of the request were produced (See Lopez Declaration, Page 6: Para 26)
139. On or about April 21, 2005, Verizon Wireless forwarded to Lopez an invoice for charges totaling $262.47.	Agree that this fact is undisputed
140. Lopez disputed the validity and amount of the 4/21/05 invoice to the extent that it exceeded $35.	Lopez thought there was an overcharge. Once the bill was explained to him, he made the payment. (See Lopez Declaration, Page 6: Para. 24)
141. As of June 30, 2005, the disputed portion of the Verizon obligation – in excess of $200 – had not been paid; however the disputed obligation was ultimately paid by Lopez on August 3, 2005.	Lopez thought there was an overcharge. Once the bill was explained to him, he made the payment. The payment was posted by Verizon on August 3, 2005. (See Lopez Declaration, Page 6: Para. 24)
WAYNE WISE RECEIVED A PRE-PETITION PREFERENCE	
142. Lopez has produced any and all documents evidencing any and all payments he made to Wayne Wise (identified as one of his creditors) during the time period of June 30, 2005 through April 27, 2006.	Agree that this fact is undisputed
143. Lopez obligation to Wayne Wise is memorialized by a promissory note dated June 16, 2004.	Agree that this fact is undisputed
144. The obligation owed by Lopez to Wayne Wise is unsecured.	
145. On May 17, 2005, Lopez paid Wayne Wise the sum of $900 for the interest that had accrued under the June 16, 2004, promissory note.	Deny. The payment was made by Mrs. Lopez, from her own checking account. (See Exhibit 12)
146. Other than the payment of $900 interest paid on May 17, 2005, no other payments have been made on the promissory note to Wayne Wise.	Agree that this fact is undisputed
147. That payment was not made in accordance with the terms of the promissory note (i.e. it was less than the full amount due).	Deny. Payment was made in accord with an oral agreement between the Lopez's and Mr. Wise. (See Lopez Declaration, Page 6: Para 25)

UNION BANK OF CALIFORNIA RECEIVED BOTH PRE-PETITION PREFERENCES AND AVOIDABLE POST-PETITION TRANSFERS	
148. Lopez has produced any and all documents evidencing any and all payments he made to Union Bank of California (identified as one of his creditors) during the time period of June 30, 2005 through April 27, 2006.	Deny, documents in Lopez's possession at the time of the request were produced (See Lopez Declaration, Page 6: Para 26)
149. In April, May, and June of 2005, Lopez paid $1000 per month to Union Bank of California on account of its compromise/settlement agreement.	Agree that this fact is undisputed
150. On April 13, 2005, Lopez transferred $500.00 to Union Bank of California on account of the pre-petition debt.	Deny as to the term "transferred". Agreement with the term "paid". (See Lopez Declaration, Page 7: Para. 27 through 28).
151. On April 13, 2005, Lopez made a second $500.00 transfer to Union Bank of California on account of the pre-petition debt.	Deny as to the term "transferred". Agreement with the term "paid". (See Lopez Declaration, Page 7: Para. 27 through 28).
152. On May 18, 2005, Lopez transferred $1000.00 to Union Bank of California on account of the pre-petition debt.	Deny as to the term "transferred". Agreement with the term "paid". (See Lopez Declaration, Page 7: Para. 27 through 28).
153. As of June 30, 2005, Lopez was indebted to Union Bank in an amount at least equal to $4,000.00.	Agree that this fact is undisputed
154. That obligation reflected a settlement compromise agreement with Union Bank.	Agree that this fact is undisputed
155. Since June of 2005, Union Bank has received monthly payments that have completely satisfied Lopez's compromise/settlement obligation, and all payments were made from the Compass Bank account.	Agree that this fact is undisputed
156. On July 8, 2005, Union Bank received a payment from Lopez in the amount of one thousand dollars on account of the debt owed to that entity and referred to on the debtor's "list of creditors".	Agree that this fact is undisputed
157. On August 8, 2005, Lopez transferred $1000.00 to Union Bank of California on account of his pre-petition debt.	Deny as to the term "transferred". Agreement with the term "paid". (See Lopez Declaration, Page 7: Para. 27 through 28).

158. On September 8, 2005, Union Bank received a payment from Lopez in the amount of one thousand dollars on account of the debt owed to that entity and referred to on the debtor's "list of creditors".	Agree that this fact is undisputed
159. On October 31, 2005, Union Bank received a payment from Lopez in the amount of one thousand dollars.	Agree that this fact is undisputed
160. On or about October 31, 2005, Lopez transferred $1,000.00 to Union Bank of California on account of his pre-petition debt.	Deny as to the term "transferred". Agreement with the term "paid". (See Lopez Declaration, Page 7: Para. 27 through 28).
161. On November 7, 2005, Union Bank received a payment from Lopez in the amount of one thousand dollars on account of the debt owed to that entity and referred to on the debtor's "list of creditors".	Agree that this fact is undisputed
162. On December 12, 2005, Union Bank received a payment from Lopez in the amount of one thousand dollars on account of the debt owed to that entity and referred to on the debtor's "list of creditors".	Agree that this fact is undisputed
163. On January 11, 2006, Lopez transferred $1,000.00 to Union Bank of California on account of his pre-petition debt.	Deny as to the term "transferred". Agreement with the term "paid". (See Lopez Declaration, Page 7: Para. 27 through 28).

CONCLUSIONS OF LAW

1) This involuntary petition must be dismissed because the alleged debtor had more than 12 creditors at the time of the filing of the involuntary petition and there are fewer than three petitioning creditors.

2) Even if there are sufficient petitioning creditors, this involuntary petition must be dismissed because the alleged debtor was generally paying his debts as they become due at the time of the involuntary filing.

Dated: June 12 2006

Respectfully submitted

By: ______________________ CMH
M. Jonathan Hayes
Attorney for Alleged Debtor Francis Lopez

Signature by the attorney constitutes a certification under Fed. R. Bankr. P. 9011 that the relief provided by the order is the relief granted by the court.

Submitted by:

By: ______________________ CMH
M. Jonathan Hayes
Attorney for Francis J. Lopez

PROOF OF SERVICE

I, Cassidy Hayes, declare:

I am a resident of the State of California and over the age of eighteen years, and not a party to the within action; my business address is 21800 Oxnard St., Suite 840, Woodland Hills, CA 91367. On June 12, 2006, I served the within documents:

by transmitting via facsimile the document(s) listed above to the fax number(s) set forth below on this date before 5:00 p.m.

X by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at Los Angeles, California addressed as set forth below.

.. by causing personal delivery by of the document(s) listed above to the person(s) at the address(es) set forth below.

.. by placing the document(s) listed above in a sealed ______________ envelope and affixing a pre-paid air bill, and causing the envelope to be delivered to a ______________ agent for delivery

.. by personally delivering the document(s) listed above to the person(s) at the address(es) set forth below.

L. Scott Keehn
Sarah H. Lanham
ROBBINS & KEEHN, APC
530 B Street, Suite 2400
San Diego, CA 92101
AND BY EMAIL

I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Executed on June 12, 2006, at Los Angeles, California.

[signature]
Cassidy Hayes

DOCKET NUMBER 66

M. Jonathan Hayes (Bar No. 90388)
Law Office M. Jonathan Hayes
21800 Oxnard St, Suite 840
Woodland Hills, California 91367
Telephone: (818) 710-3656
Facsimile: (818) 710-3659
jhayes@polarisnet.net

Attorneys for Alleged Debtor
Francis J. Lopez

FILED SD
06 JUN 13 AM 11:55
CLERK
U.S. BANKRUPTCY CT.
SO. DIST. OF CALIF.

UNITED STATES BANKRUPTCY COURT

FOR THE SOUTHERN DISTRICT OF CALIFORNIA

In re:	**CASE NO.: 05-05926-PBINV**
FRANCIS J. LOPEZ,	Involuntary Chapter 7
Alleged Debtor.	**DECLARATION OF FRANCIS LOPEZ IN OPPOSITION TO PETITIONING CREDITORS' MOTION FOR SUMMARY JUDGEMENT**
	DATE: JUNE 26, 2006 TIME: JUDGE: Hon. Peter W. Bowie DEPT.: 4

TO THE HONORABLE PETER W. BOWIE AND TO ALL INTERESTED PARTIES:

I, Francis Lopez, say and declare as follows:

1. That I have read the petitioners' Separate Statement of Undisputed Facts and offer the following in reply:

2. Undisputed Material Fact No. 5

In fact, this checking account was opened in 2003, not 2004.

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Woodland Hills, CA 91367

3. Undisputed Material Fact No. 6

This needs to be clarified, as to the handwritten notations. Handwritten notations on bills are done by me when the bill is paid, if the notation includes payment information, such as a check number and date.

4. Undisputed Material Fact No. 16

In fact, I have not abandoned that business activity, but am still a licensed agent and have agency contracts with several well-known insurance companies.

5. Undisputed Material Fact No. 19

My primary residence was in fact purchased by myself and my wife, Madeleine, as "husband and wife", and is held as tenancy by the entirety.

6. Undisputed Material Fact No. 20

The current amount of the obligations secured by the residence are in fact not $750,000, but are in excess of $800,000.

7. Undisputed Material Fact No. 21

The current value of the residence is not $1,295,000; that is the list price, as the residence is currently for sale. In today's unstable real estate market, the actual value of the house is estimated between $1.05 million to $1.20 million. In April of this year, we accepted an offer of $1,195,000, which was subsequently derailed by the actions of the creditors', and the involuntary filing causing a problem with the title insurance needed to purchase the property.

8. Undisputed Material Fact No. 24

The statement that I am entitled to a homestead exemption of $75,000 is false. In fact, the property is held as tenancy by the entirety, and is exempt.

9. Undisputed Material Fact No. 25

"The net apparent equity in the residence to an estate" is not an accounting term I am familiar with, but if Mr. Keehn's contention is that the residence has equity of $405,000, he is mistaken. If the residence sells for $1.2 million, there is a real estate commission fee of approximately $60,000, plus closing costs and taxes. A more realistic

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estimate of the equity in the residence is $250,000, but again, this residence is exempt property as it pertains to my possible bankruptcy estate.

10. Undisputed Material Fact No. 26

As to the claim that "other than his residence, Lopez has no asset of any significant value (more than 10,000 in equity)", I disagree on two points: First, the residence is exempt as being held as a tenancy by the entirety; second, I also own intellectual property.

11. Undisputed Material Fact No. 27

Petitioners claim that "Stanly holds claims against Lopez that total in excess of $2,435,800". Stanly has a claim against me for $50,000, which is well known to the Court, as that claim is the basis for this involuntary proceeding. If Stanly is referring to possible claims as a result of his broad litigation against my wife and I, I would point out that I have a potential claim against him for invasion of privacy, and he has already been convicted of that crime in California.

12 Undisputed Material Fact No. 28

Stanly has his facts wrong, when asserting that "Frederick Lopez holds claims against Lopez in the amount of $55,000." My father, Frederic, lent me and my wife $35,000, and we signed a promissory note for it. This note amount included $20,000 that he had previously lent us. Thus, Stanly is making the assumption that the loan amount was $35,000 plus $20,000, which is erroneous.

13. Undisputed Material Fact No. 32

Stanly has his facts wrong, when asserting that "Frederick Lopez holds claims against Lopez in the amount of $55,000." My father, Frederic, lent me and my wife $35,000, and we signed a promissory note for it. This note amount included $20,000 that he had previously lent us. Thus, Stanly is making the assumption that the loan amount was $35,000 plus $20,000, which is erroneous.

14. Undisputed Material Fact No. 37 through 38

Stanly claims that I "was not indebted to Allstate Floridian in any amount" as of June 30,2005. However, on April 27, 2005, the premium amount was adjusted upwards

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from approximately $1900 per annum to $2900 per annum. As of the petition date, there was a balance owing to this creditor. (See Exhibit 2). Further, Allstate Floridian has provided homeowner insurance for both the 7/2004 through 7/2005 period as well as the 7/2005 through 7/2006 period, and payments for this service were made periodically.

15. Undisputed Material Fact No. 39

As to the petitioners' claim that "The final installment for that period became due on November 21, 2004", that is also erroneous. This insurance policy contained the option to pay over time, as shown in Exhibit 2A.

16. Undisputed Material Fact No. 41 through 43

Petitioners claim that American Express was not a creditor on June 30, 2005. Not only is this false, but Mr. Stanly is fully aware that American Express was my creditor, even prior to the filing of this involuntary petition. I had several accounts with American Express (See Exhibit 3), and I was a primary cardholder and guarantor of the account. I ordered a card for Mr. Stanly, and thousands of dollars of business expenses were put onto these cards, and a line of credit that I opened, that Mr. Stanly had full knowledge of. In March of 2005, three months before he filed this petition, Stanly had his attorney subpoena American Express for records pertaining to this account. (See Exhibit 14).

17. Undisputed Material Fact No. 60

I do not have a "bona fide dispute" with this creditor. The automatic deduction amount issue was resolved to the mutual satisfaction of both parties.

18. Undisputed Material Facts No. 66 through 72.

I strongly disagree with Mr. Keehn's use of the word "transferred" when describing payments I made to Citibank, one of my creditors. These payments were minimum payments required to keep the account in good standing, and were made in the ordinary course of business. Further, while we are on the subject of Citibank, Mr. Stanly was well aware of the existence of this creditor, despite his assertion in his original pleadings in this case that he was only aware of 3 creditors, all located in California. Thus, Stanly was

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aware of the existence of at least two additional creditors, American Express and Citibank, prior to the filing of the involuntary petition.

19. Undisputed Material Fact No. 77

Mr. Keehn insinuates that because payments to a creditor are made out of an escrow account, those creditors are somehow not mine. That is a false and misleading statement, as the ultimate responsibility for payment of taxes, insurance or other obligations belong to me, regardless of whether they are paid out of escrowed funds

20. Undisputed Material Fact No. 84

Mr. Keehn contends that my obligation to Ft. Walton Beach Medical Center is the subject to a bona fide dispute. This needs clarification. While the doctor did tell me that a certain procedure should be covered by insurance, the doctor had no knowledge of my insurance coverages, and when I did check with my insurance carrier, that particular procedure was not covered. I was informed that I had to get clearance in advance for that procedure which I did not do. Further, because it was an emergency room situation, I felt that the procedure needed to be done regardless of insurance coverage. The average American has many issues like this regarding health insurance coverage, and we all understand that whatever amounts are not covered by insurance are the responsibility of the patient.

21. Undisputed Material Fact No. 89

Here, Mr. Keehn contends that the "payment to Household Bank was $223.91 less than the minimum payment due". However, I called Household Bank, and they informed me that a minimum payment of $50 would suffice.

22. Undisputed Material Fact No.96 through 100

Mr. Keehn insinuates that Northwest Florida Daily News was not a creditor. This is despite his courting of Northwest Florida Daily News as a petitioning creditor. I acknowledged that they were a creditor, because there was, in addition to subscriptions, a bill for a classified ad that this newspaper ran for me. That bill was subsequently paid.

23. Undisputed Material Fact No.132 through 137

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Woodland Hills, CA 91367

Sometime in 2001 or 2002, I took out an insurance policy and named my wife Madeleine as the beneficiary. This was a 20-year term policy written by Valley Forge Life Insurance. The payments were for $486 per annum, or the choice of semi-annual or quarterly payments. This is a 20 year obligation, and thus, I listed them as a creditor. While Mr. Keehn contends that I owe them nothing as of June 30, 2005, I must point out that this is not a one-year, terminating policy. The obligation is to make payments each quarter, semi-annually, or annually to keep the policy in force. In other words, when purchasing a long-term policy, the insurance contract itself sets forth payments for the entire term of the insurance policy, not just for one year.

24. Undisputed Material Fact No.140 through 141

Regarding the creditor Verizon Wireless: Although there was a disagreement with the amount of the April 2005 bill, this matter was handled to the mutual satisfaction of both me and Verizon Wireless, and the account was paid in full. In fact, I kept this account for cellular service until November 2005, and there were no disputed amounts or any amounts claimed owing by Verizon at that time. Exhibit 15 shows the continuation of the account, and the closing statement showing $0.00 balance. Also, note the payments made by Noveon Systems, Inc., my employer.

25. Undisputed Material Fact No. 147

Mr. Wise and I made an oral agreement to extend the promissory note indefinitely, with the understanding that my wife and I would pay him $900 for interest, and that the amount of the loan would be repaid once the house was sold. My wife, Madeleine, wrote a check for the interest and sent it to Mr. Wise (See Exhibit 12).

26. Production of Documents Evidencing Payments

Mr. Keehn has made many statements to the effect of "Lopez has produced any and all documents evidencing any and all payments he made to (insert Creditor name here)". During the course of the last two months, and since Mr. Keehn's last document production request, I have been involved with my wife Madeleine, in a lawsuit brought in San Diego by Mr. Stanly against her. During the course of the last few weeks, I have had to search

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extensively through boxes and boxes of old paperwork, and have been able to locate files that are pertinent to my answers in response to Mr. Keehn's "Separate Statement of Undisputed Facts". Most of the new evidence in response to Keehn's misstatements are a result of this recent effort.

27. Statement Regarding Payments to Creditors: Post-Petition

Petitioning Creditor Stanly claims that various creditors should not be included because they received "Voidable Post-Petition Payments." This is a false contention. Payments made to my creditors were not "transfers" from property of the bankruptcy estate. They were all transfers made from wages or otherwise property acquired after the Involuntary Petition was filed.

28. Statement Regarding Preference Payments.

Petitioning Creditor Stanly claims that various creditors received "Pre-Petition Preference Payments". Payments to my creditors were payments for debts in the ordinary course of business and made in the ordinary course of business.

29. Additional Creditor

When I originally responded to the involuntary petition, I listed all of the creditors I was aware of, other than family members. During my search of records in response to petitioning creditors' Motion for Summary Judgment, I have come across another creditor that I did not list in my original response, Curd Galindo and Smith. I owed this creditor $900.00 as of the date of the June 30, 2005 filing of the involuntary petition. (See Exhibit 16, statements from Curd Galindo and Smith).

30. Attached hereto as Exhibit 1 is a true and correct copy of a Warranty Deed recorded July 17, 2003.

31. Attached hereto as Exhibit 2 is a true and correct copy of correspondence from Allstate regarding the home insurance of my wife and me.

32. Attached hereto as Exhibit 2A is a true and correct copy of the Allstate Insurance bill for the period July 17, 2004 through July 17, 2005.

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Woodland Hills, CA 91367

33. Attached hereto as Exhibit 2B is a true and correct copy of the cancellation notice from Allstate.

34. Attached hereto as Exhibit 3 is a true and correct copy of a notice from American Express dated October 6, 2005.

35. Attached hereto as Exhibit 4 is a true and correct copy of my Visa statement for July 2005.

36. Attached hereto as Exhibit 5 is a true and correct copy of a statement from Cox Communications dated July 22, 2005.

37. Attached hereto as Exhibit 6 is a true and correct copy of a check to Household Credit for $50.00.

38. Attached hereto as Exhibit 7 is a true and correct copy of my wife's bank statement from SunTrust Bank for the month of August, 2005.

39. Attached hereto as Exhibit 9 is a true and correct copy of a statement from Okaloosa Gas for October 2005.

40. Attached hereto as Exhibit 11 is a true and correct copy of my wife's bank statement from SunTrust Bank for the month of August, 2005.

41. Attached hereto as Exhibit 12 is a true and correct copy of my wife's bank statement from SunTrust Bank for the month of July, 2005.

42. Attached hereto as Exhibit 13 is a true and correct copy of a statement from Cingular for July, 2005.

43. Attached hereto as Exhibit 14 is a true and correct copy of a subpoena dated February 2005 served on Citicorp Credit Services by Stanly's state court attorney.

44. Attached hereto as Exhibit 15 is a true and correct copy of a statement from Verizon dated December 4, 2005.

45. Attached hereto as Exhibit 16 is a true and correct copy of a statement from Curd, Galindo & Smith dated June 2, 2005.

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21800 Oxnard St. Suite 840
Woodland Hills, CA 91367

Executed on June 12, 2006, at Destin, Florida.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Francis Lopez

LAW OFFICES
M. Jonathan Hayes
21800 Oxnard St. Suite 840
Woodland Hills, CA 91367

Executed on June 12, 2006, at Destin, Florida.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Francis Lopez

LAW OFFICES
M. Jonathan Hayes
21800 Oxnard St. Suite 840
Woodland Hills, CA 91367

Attorney at Law
Lamar A. Conerly, P.A.
4481 Legendary Drive, Ste. 200 P.[redacted]Box [redacted]
Destin, FL 32550-1006
850-837-5118
File Number: 03.0100
Parcel Identification No. 002S22135600010050

BK [redacted] 4048
FILE # 2035735 RCD: Jul 17 2003 @ 03:19PM
Newman C. Brackin, Clerk, Okaloosa Cnty Fl

[Space Above This Line For Recording Data]

Warranty Deed

(STATUTORY FORM - SECTION 689.02, F.S.)

This Indenture made this **15th** day of **July, 2003** between **Jeffrey D. Fudge and Sonya L. Fudge, husband and wife** whose post office address is **310 Sand Myrtle Trail , Destin, FL 32541** of the County of **Okaloosa**, State of **Florida**, grantor*, and **Francis Lopez and Madeline Lopez, husband and wife** whose post office address is **310 Sand Mrytle Trail, Destin, FL 32541** of the County of **Okaloosa**, State of **Florida**, grantee*,

Witnesseth that said grantor, for and in consideration of the sum of TEN AND NO/100 DOLLARS ($10.00) and other good and valuable considerations to said grantor in hand paid by said grantee, the receipt whereof is hereby acknowledged, has granted, bargained, and sold to the said grantee, and grantee's heirs and assigns forever, the following described land, situate, lying and being in **Okaloosa County Florida**, to-wit:

LOT 5, BLOCK I OF KELLY PLANTATION PHASE II, ACCORDING TO THE PLAT THEREOF AS RECORDED IN PLAT BOOK 15, PAGE(S) 59-60, OF THE PUBLIC RECORDS OF OKALOOSA COUNTY, FLORIDA.

SUBJECT TO covenants, conditions, restrictions, reservations, limitations, easements and agreements of record, if any: taxes and assessments for the year 2003 and subsequent years; and to all applicable zoning ordinances and/or restrictions and prohibitions imposed by governmental authorities, if any,

TOGETHER with all the tenements, hereditaments and appurtenances thereto belonging or in anywise appertaining.

TO HAVE AND TO HOLD, the same in fee simple forever.

and said grantor does hereby fully warrant the title to said land, and will defend the same against lawful claims of all persons whomsoever.

* "Grantor" and "Grantee" are used for singular or plural, as context requires.

In Witness Whereof, grantor has hereunto set grantor's hand and seal the day and year first above written.

Signed, sealed and delivered in our presence:

Witness Name: Lamar Conerly, Jr.
Witness Name: Janie Colowich

Jeffrey D. Fudge (Seal)

Witness Name: Lamar Conerly, Jr.
Witness Name: Janie Colowich

Sonya L. Fudge (Seal)

Deed Doc Stamps $5,215.00 D.C. AW

State of Florida
County of Okaloosa

The foregoing instrument was acknowledged before me this 15th day of July, 2003 by Jeffrey D. Fudge and Sonya L. Fudge, who [ ] are personally known or [X] have produced a driver's license as identification.

EX 1

[Notary Seal]

Notary Public

Allstate Floridian Indemnity Company
Petresky Ins Agy In
54 Beal Pkwy NW
Ft Walton Bch FL 32548

Your Quick Insurance Check

✓ Verify the information listed in the Policy Declarations.
✓ Please call if you have any questions.
✓ File this package safely away.
✓ If premium is due or if it has changed, a bill or refund will be mailed separately.

Francis & Madeline Lopez
310 Sand Myrtle Trail
Destin FL 32541-3429

Confirming Your Policy Change

We've sent along this mailing to verify the changes to your policy that you recently requested. The changes took effect on April 27, 2005. Please look over all the information in this mailing, and call us right away if you have any questions or if anything isn't exactly right.

The accompanying Amended Policy Declarations includes these changes:

[redacted]
A policy coverage has been changed.
A policy coverage has been changed.
A policy coverage has been changed.

Your premium for this current period has been increased by a total of $134.00.

The coverages and limits you carry for your property, and the costs of those coverages, are listed in detail on the enclosed Amended Policy Declarations. You can see the specific changes to your policy by comparing this Amended Policy Declarations to the Policy Declarations previously mailed to you.

If you have any questions or concerns, please contact me at (850) 243-5303—or call the Allstate Customer Information Center at 1-800-ALLSTATE (1-800-255-7828).

Sincerely,

Petresky Ins Agy In
Your Allstate Agent

PROP *010000905042653016270401* 000000981074177 070 085 FL

Information as of April 26, 2005 EP29

Ex 2-1

Allstate Floridian Indemnity Company

AMENDED

Homeowners Policy Special Declarations

THIS POLICY CONTAINS A SEPARATE DEDUCTIBLE FOR HURRICANE LOSSES, WHICH MAY RESULT IN HIGH OUT-OF-POCKET EXPENSES TO YOU

Summary

NAMED INSURED(S)	YOUR ALLSTATE AGENT IS:	CONTACT YOUR AGENT AT:
Francis & Madeline Lopez 310 Sand Myrtle Trail Destin FL 32541-3429	Petresky Ins Agy In 54 Beal Pkwy NW Ft Walton Bch FL 32548	(850) 243-5303

POLICY NUMBER	POLICY PERIOD	PREMIUM PERIOD
9 61 074177 07/16	Begins on July 16, 2004 at 12:01 A.M. standard time, with no fixed date of expiration	July 16, 2004 to July 16, 2005 at 12:01 A.M. standard time

LOCATION OF PROPERTY INSURED
310 Sand Myrtle Trail, Destin, FL 32541-3429

[redacted] (Listed in order of precedence)

[redacted]

Total Premium for the Premium Period *(Your bill will be mailed separately)*

Premium for Property Insured	$2,898.00
TOTAL	**$2,898.00**

Your policy change(s) are effective as of Apr. 27, 2005

✓ ***The above total premium includes a $1,558 hurricane premium.***

✓ ***The above total premium includes a $1,340 non-hurricane premium.***

✓ ***The above total premium includes a $2.00 EMPA trust fund surcharge.***

PHOP *0100009050426530162704O2*

2-2

Allstate Floridian Indemnity Company

Policy Number: 9 81 074177 07/16 Your Agent: Petrosky Ins Agy In (850) 243-5303
For Premium Period Beginning: July 16, 2004

Your Policy Documents

Your Homeowners policy consists of this Policy Declarations and the documents listed below. Please keep these together.

- Floridian Indemnity HO Policy-Special form AP1238
- Broad and Special HO Amend. End. form AP3320
- Hurricane Deductible Endorsement form AP865
- Amendatory Endorsement form AP3251
- Bldg. Struct. Reimb. Ext. Limits End. form AP863
- Lender's Loss Payable Endorsement form AP875

Important Payment and Coverage Information

The property insurance adjustment condition applies using the Boeckh Publications Building Cost Index developed by The American Appraisal Associates, Inc.

Do not pay. Mortgagee has been billed.

If You Have a Question About Your Insurance...

If you wish to present an inquiry or obtain information about coverage, or if you need assistance in resolving a complaint, please call (850) 243-5303

IN WITNESS WHEREOF, **Allstate Floridian Indemnity Company** has caused this policy to be signed by two of its officers at St. Petersburg, Florida, and if required by state law, this policy shall not be binding unless countersigned on the Policy Declarations by an authorized agent of **Allstate Floridian Indemnity Company.**

PRDP *0100009050426530162704O3*

Information as of April 26, 2005

FL070AMD

2-3

Detach along perforation. Re[redacted] a[redacted]ve portion with your payment in [redacted] [redacted]ed envelope.
Please make check or mon[redacted]rde[redacted]yable to ALLSTATE FLORIDIAN [redacted]E[redacted] COMPANY.

Homeowners Insurance Bill

Allstate Floridian Indemnity Company

Policy Number: 9 61 074177 07/16
Premium Period: 7/16/04 To 7/16/05 (12:01 A.M. Standard Time)

Due Date September 16, 2004
To Pay In Full $ 1907.50
Minimum Amount Due $ 191.75

Policy Issued To

FRANCIS & MADELINE LOPEZ
310 SAND MYRTLE TRAIL
DESTIN FL 32541-3429

Policy Number	Description	Agent And Telephone Number
9 61 074177 07/16	310 SAND MYRTLE TRAIL	PETRESKY INS AGY IN (850) 243-5303

Payment Options

Choose the payment option below that best meets your needs.

Option 1

If you want to pay in full:

- Pay $ 1907.50.
- You will receive no more bills until your policy renews or you make a change in coverage resulting in additional premiums.
- You will not be charged any installment fees.

Option 2

If you want to make the minimum payment:

- Pay $ 191.75.
- Then your payment schedule will be as follows:

DUE DATE	MINIMUM AMOUNT DUE	DUE DATE	MINIMUM AMOUNT DUE
9/16/04	$191.75	10/16/04	$191.75
11/16/04	$191.75	12/16/04	$191.75
1/16/05	$191.75	2/16/05	$191.75
3/16/05	$191.75	4/16/05	$191.75
5/16/05	$191.75	6/16/05	$191.75

- Each payment includes a $ 1.00 installment fee.

Option 3

If you want to pay less than the full amount but more than the minimum:

- Pay any amount between $ 191.75 and $ 1907.50.
- A new payment schedule for your remaining payments will appear on your next bill.
- You will be charged a $ 1.00 installment fee each time you choose this payment option.

pd 1536 9/24
191.75

(OVER)

This statement as of August 26, 2004. 040826013068A 41

[redacted]

Ex 2A

Allstate Floridian Indemnity Company

Homeowners Policy Cancellation Notice
for Non-Payment of Premium

Cancel Date and Time:	To Pay In Full:	Minimum Amount Due:
March 21, 2005 at 12:01 A.M.	$ 1,504.77	$ 1,504.77

Important Information About Your Insurance
If you want your insurance coverage to continue and do not want it to cancel, please make sure we receive the **Minimum Amount Due** by the end of the day (midnight) on March 20, 2005 or **your policy will cancel at 12:01 a.m. Standard Time on March 21, 2005.**

We value your business and want to make sure your policy continues to protect you.

However, if you wish your coverage to stop before the Cancel Date and Time, you should contact your agent or producer of record immediately, as any unpaid premium amounts may be referred to collections.

Please read the other important information contained within this Notice.

Your Policy Number: 961 074 177

Policy Issued To:	FRANCIS & MADELINE LOPEZ 310 SAND MYRTLE TRAIL DESTIN FL 32541-3429
Description:	310 SAND MYRTLE TRAIL
Your Agency:	PETRESKY INS AGY IN (850) 243-5303

This statement as of March 1, 2005.

(OVER) (page 1 of 2)

- **Please DO NOT include or write policy change requests on your payment notice.** Contact your insurance representative.
- Please make check or money order payable to ALLSTATE FLORIDIAN INDEMNITY COMPANY and include your policy number.
- Detach here along perforation. Return below payment notice with your payment in the enclosed envelope.

Your Policy Number: 961 074 177 07/16
Allstate Floridian Indemnity Company
PO BOX 40047 ROANOKE VA 24022-0047

41017601

CANCEL DATE AND TIME: March 21, 2005 at 12:01 A.M.

TO PAY IN FULL:	MINIMUM AMOUNT DUE:
$ 1,504.77	$ 1,504.77

Amount Enclosed: $.

Return Payment to:

FRANCIS & MADELINE LOPEZ
310 SAND MYRTLE TRAIL
DESTIN FL 32541-3429

ALLSTATE FLORIDIAN INDEMNITY COMPANY
P.O.BOX 650262
DALLAS TX 75265-0262

Ex 2B-1

/0850700097000000961074177071610150477800000000001504778/

Allstate Floridian
Indemnity Company

paid late out of escrow

Homeowners Insurance
Reinstatement Notice

Your Policy Number: 961 074 177

Your Agency:	PETRESKY INS AGY IN (850) 243-5303
Policy Issued To:	FRANCIS & MADELINE LOPEZ 310 SAND MYRTLE TRAIL DESTIN FL 32541-3429
Description:	310 SAND MYRTLE TRAIL

What You Should Know:

We are pleased to inform you that your insurance coverage was continued in force without interruption.
A payment was credited to your policy in the amount of $ 1504.77.
If you have any questions about this reinstatement notice, please contact your agent.

A Copy of This Notice Was Sent To:

AURORA LOAN SERVICES INC ITS
SUCCESSORS
&/OR ASSIGNS
P O BOX 10422
VAN NUYS CA 91410-0422

This statement as of March 16, 2005.

54 BEAL PKWY NW FT WALTON BCH FL 32548

FRANCIS & MADELINE LOPEZ
310 SAND MYRTLE TRAIL
DESTIN FL 32541-3429

2B-2

AMERICAN EXPRESS

October 6, 2005

American Express
Post Office Box 53779
AZ 08-04-03 Credit Admin
Phoenix, AZ 85027

FRANCIS J LOPEZ
P.O.BX 219
DESTIN FL
32540

RE: American Express Account # 3783 498022 83007 and
3715 418391 81009
Balance Owing $ 3547.25 and $21356.01

Dear Accounts Payable,

This is a reminder letter that a payment is due for the account referenced above.

Please call today to set up a payment towards the account balance.

If payment is mailed please send to the following address:

American Express
PO BOX 360001
Fort Lauderdale FL 33336-0001

American Express Service Representative,

Christine Thies
1-888-297-3947 x22499

Ex 3-1

Cards

American Express Cards
777 American Expressway
Ft. Lauderdale, FL 33337

March 11, 2005

Francis J. Lopez
PO Box 219
Destin, FL 32540-0219

American Express Card Account(s): 3783-498022-83007, 3715-418391-81009 & 3782-621647-85008
Our File #05067DHS1502425

Dear Madam:

I am writing this letter to advise you that American Express Travel Related Service Company, Inc. / American Express Centurion Bank has been served with a subpoena ordering the production of certain information and/or documents relative to your account(s).

We are legally obligated to comply with this request and are therefore in the process of compiling the requested documents. You have the right to retain counsel and take any action you deem necessary to prevent production of the records and information. If we do not hear from you within fourteen (14) days from the date of this letter your records will be produced.

Very truly yours,

Cathy Bazal

Cathy Bazal, Subpoena Correspondent
Assistant to the Custodian of Records
American Express
(954) 503-7001 ext. 65544

3-2

RANCIS J LOPEZ [redacted]

ccount Number: 4050 8605 1242 9141

Bank of Americ[redacted]

Custom[redacted]orner

Get a CD Player just for trying Travelers Advantage rewards and discount program, two months for only $1. Go to www.travelersadvantage.com/offer now to claim your CD Player. You'll save on car rentals...hotels...airfare and much more!

our Bank of America Visa® Account

New Balance	**$2,386.50**	**Past Due Amount**	**$53.00**
Total Credit Line	$2,200.00	Available Credit	$0.00
Cash Limit	$1,100.00	Available Cash	$0.00
Overlimit Amount	$151.50	Billing Date	07/13/05
Minimum Payment Due	$292.50	Payment Due Date	08/07/05

4-Hour Customer Service 1.800.732.9194
or Lost or Stolen Cards 1.800.848.6090

Pay online! Visit www.bankofamerica.com

ransactions

View recent transactions and pay your bill online at www.bankofamerica.com.

POST. DATE	TRANS. DATE	REF. NO.	DESCRIPTION	AMOUNT CR=CREDIT
un 26	Jun 26	399	PAYMENT - THANK YOU	CR $54.00
ul 09	Jul 09		LATE PAYMENT FEE	$39.00
ul 13	Jul 13		OVERLIMIT FEE ASSESSED FOR JUL 13, 2005	$35.00
ul 13	Jul 13		PERIODIC FINANCE CHARGE	$56.98

ccount Summary

revious Balance		$2,309.52
urchases	+	$0.00
ash Advances	+	$0.00
ther Debits	+	$74.00
redits	-	$0.00
INANCE CHARGE	+	$56.98
ayments	-	$54.00
ew Balance	=	$2,386.50
ast Due Amount	=	**$53.00**

inance Charge Summary

	Corresponding APR	Daily (D) / Monthly (M) Periodic Rate	Average Daily Balance (ADB)	Minimum (M) / Periodic (P) Charge
urchases	29.990%	0.08217%v D	$2,247.60	$55.41 P
ash	29.990%	0.08217%v D	$63.53	$1.57 P

NNUAL PERCENTAGE RATE 29.990% v=Variable

our account is 1 payment past due in the amount of $53.00. Please mail your payment today.

Please return remit coupon with your payment ↓

Ex 4-1

Bank of America Higher Standards

Search · Locations · Mail · He

Accounts	Bill Pay & e-Bills	Transfer Funds	Investments	Customer Service

Pay Bills Review Payments Payment Accounts Automatic Payments

Pay Bill: Payment Successful

OK **You have successfully scheduled your payment.**
You can review your payments in Review Payments.

From: Sun -9301
To: Visa Titanium -9141
Payment Date: 8/11/2005
The payment date is the date you can expect the payment to be received.
Amount: $292.50
Confirmation Number: 4D34Z-DKXS0

Return to Pay Bills

Secure Area

Accounts · Bill Pay & e-Bills · Transfer Funds · Investments · Customer Service
Search · Locations · Mail · Help · Site Map · Sign Off

Bank of America, N.A. Member FDIC. Equal Housing Lender
© 2005 Bank of America Corporation. All rights reserved.

4-2

Checks: 12 [redacted] ak in check sequence [redacted]

[redacted]

Page 1 of 3
[redacted]
[redacted]9301
10/17/2005

SUNTRUST

Account Statement

MADELEINE J MAGILL-LOPEZ
310 SAND MYRTLE TRL
DESTIN FL 32541-3429

[redacted]

THE ACCESS 3 EQUITY LINE IS A GREAT WAY TO PUT YOUR EQUITY TO WORK. WE OFFER FLEXIBLE PAYMENT OPTIONS AND COMPETITIVE RATES. WHETHER YOUR NEEDS ARE FOR DEBT CONSOLIDATION OR HOME REMODELING SUNTRUST BANK CAN HELP. CALL 800.SUNTRUST AND ASK US ABOUT OUR SPECIAL PROMOTIONAL RATES! SUNTRUST BANK. EQUAL HOUSING LENDER

4-3

COX COMMUNICATIONS

www.cox.com

July 22, 2005

Account Number: 001 8710 003886502

FRANCIS LOPEZ
310 SAND MYRTLE TRL
DESTIN FL 32541-3429-10

Previous Balance	Payments Received	Adjustments	Current Charges	Total Due	Due By
$232.60	$-237.98	$1.00	$115.80	$111.42	Aug 15, 2005

Current Charges as of July 22, 2005

Total Cable Services	68.44
Total Internet Services	39.95
Total Taxes	7.41
Total Current Charges	$115.80

Questions?

CUSTOMER SVC: 850-796-1269
REPAIR SVC: 850-796-1269
BUSINESS SVCS: 866-272-5777
On-Line: www.cox.com/gulfcoast

About Your Account

RETURNED CHECK CHARGE Each unpaid check returned to Cox Communications for non-sufficient funds will result in a $25.00 returned check charge withdrawn electronically. If your check is returned for non-sufficient funds, you expressly authorize your account to be electronically debited or bank drafted for the amount of the check plus any applicable fees. The use of a check for payment is your acknowledgement and acceptance of this policy and its terms and conditions.

What's New From Cox

Did you know that Cox Offers many convenient ways to pay your bill?

1.) Directly deducted from your bank account or credit card with EasyPay.

2.) Securely on-line at www.cox.com

Continued on Reverse

Total Monthly Internet Service	$39.95
Total Cox Internet Service	**39.95**

Taxes and Surcharges

Cable/Internet Taxes	Amount
FCC FEE	0.06
STATE SALES TAX	0.23
STATE COMMUNICATIONS SERVICE TAX	5.93
LOCAL COMMUNICATIONS SERVICE TAX	1.19
Total Cable/Internet Taxes	*$7.41*
Total Taxes and Surcharges	**$7.41**

Ex 5-1

NOVEON SYSTEMS, INC.

5189

Cox Communications 7/7/2005

Date	Type	Reference	Original Am	Balance Due	Discoun	Payment
07/07/2	Bill		237.98	237.98		237.98
					Check Amoun	237.98

Compass 237.98

5-2

Primary Account: 0021294144
Page 3 of 3
Enclosures 0
Apr 27, 2005 to May 25, 2005

46

FRANCIS J LOPEZ

Image Items

[redacted]

#1608 05/03 $171.70

[redacted]

[redacted]

#1615 05/18 $1,000.00

#1616 05/24 $72.00

#1625 05/18 $50.00

[redacted]

#2010 05/19 $379.00

Ex 6-1

SUNTRUST BANK
P O BOX 622227
ORLANDO FL 32862-2227

[redacted]
[redacted]9301
08/12/2005

SUNTRUST

Account Statement

MADELEINE J MAGILL-LOPEZ
310 SAND MYRTLE TRL
DESTIN FL 32541-3429

[redacted]

ONLINE BANKING WITH BILL PAY IS THE IDEAL MONEY MANAGEMENT TOOL THAT ALLOWS YOU TO MANAGE YOUR ACCOUNTS AND PAY BILLS FROM ONE CONVENIENT LOCATION. YOU CAN EVEN SCHEDULE NEXT DAY AND SAME DAY PAYMENTS FOR SOME BILLS. CALL US AT 800.382.3232 OR VISIT SUNTRUST.COM TO TRY BILL PAY TODAY. SUNTRUST BANK MEMBER FDIC.

Account Summary

Account Type	Account Number	Statement Period
FREE CHECKING	[redacted]9301	07/15/2005 - 08/12/2005

Description	Amount	Description	Amount
Beginning Balance Deposits/Credits Checks Withdrawals/Debits Ending Balance	[redacted]	Average Balance Average Collected Balance Number of Days in Statement Period	[redacted]

Deposits/ Credits

Date	Amount	Description
[redacted]	[redacted]	

Deposits/Credits: 3 Total Items Deposited: 4

Checks

Check Number	Amount	Date Paid	Check Number	Amount	Date Paid	Check Number	Amount	Date Paid
1051	70.63	07/25	1054 6K GAS	44.33	07/21	[redacted]		
1052	46.10	07/28	1055 KELLY HOA	550.00	07/26			
1053	28.10	07/28	*1059	36.17	08/02			

Checks: 8 *Break in check sequence

Withdrawals/ Debits

Date Paid	Amount	Description
[redacted]	[redacted]	[redacted]
07/29	38.75	*ELECTRONIC/ACH DEBIT* AT&T Consumer CHECKPAYMT 1058
[redacted]	[redacted]	[redacted]
08/08	23.38	*CHECK CARD PURCHASE* SABER A. MEXICO FT WALTON BEAFL
08/08	6.88	*POINT OF SALE DEBIT* TR DATE 08/08 Wal-Mart Super Center DESTIN FL 13620006
08/08	22.97	*POINT OF SALE DEBIT* TR DATE 08/07 PUBLIX 4425 COMMONS DR DESTIN FL A90003
08/10	12.69	*CHECK CARD PURCHASE* BLOCKBUSTER VIDE DESTIN FL
08/10	28.31	*POINT OF SALE DEBIT* TR DATE 08/10 Wal-Mart Super Center DESTIN FL 13620030

Ex 7-1

Continued on next page

1917

Customer Service (850) 729-4700 | Crestview Area (850) 682-3017 | [illegible]e/Santa Rosa Beach Area (850) 244-5197

SERVICE ADDRESS 310 SAND MYRTLE TRL

ACCOUNT NUMBER	CYCLE	BILL DATE	DELINQUENT DATE
232079-74786	91-13	10/21/05	11/15/05

Last Bill Amount	46.38
Payments	46.38-
Adjustments	.00
Unpaid Balance	.00

Rate Class : RESIDENTIAL
Last payment amount/date: 46.38 9/29/05

	Service Period		Days	Meter Number	Meter Readings		-----Calculations-----	
GS	9/21/05	10/20/05	29	J466820	Present	2297	Consumption	19
					Previous -	2278	Meter Mult.	X 1.006
					Consumption	19	Adj Cons	19.11
							BTU Factor	X 1.040
							Bill Therms	19.88

Service	Therm	Charge	Total
GS CUSTOMER CHARGE		10.00	10.00
GS COST OF GAS CHARGE	19.89	18.65	18.65
GS DELIVERY CHARGE	19.89	8.67	8.67

Total Amount Due $37.32

pd 1689

Online at okaloosagas.com

####### REMEMBER #######
PAYMENTS RECEIVED ON WEEKENDS, HOLIDAYS OR AFTER 3PM ON REGULAR BUSINESS DAYS ARE POSTED THE - FOLLOWING - BUSINESS DAY

Your Rates Per Therm Used:
Cost of Gas .9378
Delivery Charge .4361

A 10% late charge will be added to your account if current charges have not been paid by the delinquent date. This bill is due when rendered.

Ex 9-1

Primary Account: 0021294144
Page 3 of 3
Enclosures 0
Oct 27, 2005 to Nov 25, 2005

46

FRANCIS J LOPEZ

ALL BALANCES 0.499%

Image Items

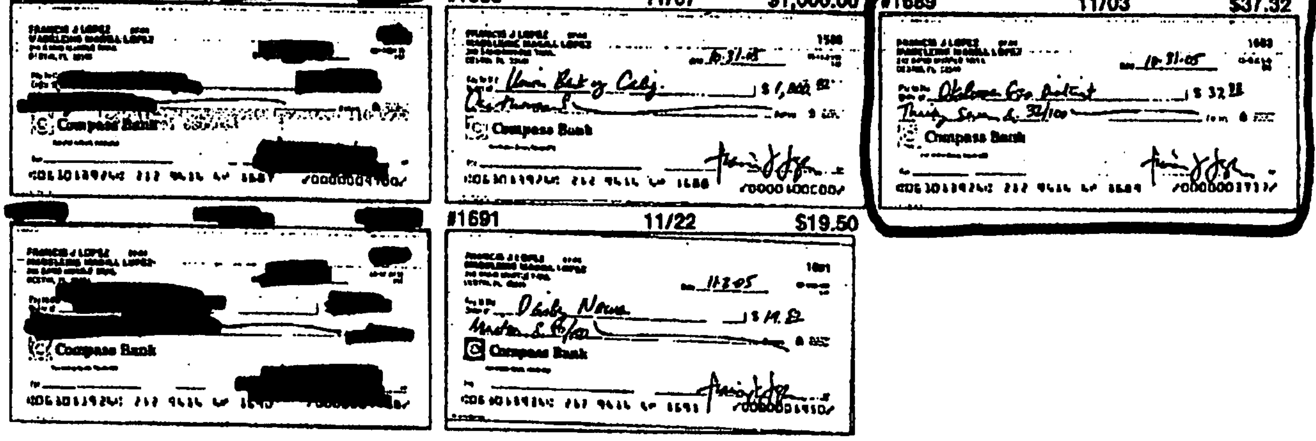
[redacted]

#1688 11/07 $1,000.00

#1689 11/03 $37.32

[redacted]

#1691 11/22 $19.50


Compass Bank
Compass Bank
Compass Bank
Compass Bank
Compass Bank

SUNTRUST BANK
P O BOX 622227
ORLANDO FL 32862-2227

Page 1 of 2
[redacted]9301
08/12/2005

SUNTRUST

Account Statement

MADELEINE J MAGILL-LOPEZ
310 SAND MYRTLE TRL
DESTIN FL 32541-3429

[redacted]

ONLINE BANKING WITH BILL PAY IS THE IDEAL MONEY MANAGEMENT TOOL THAT ALLOWS YOU TO MANAGE YOUR ACCOUNTS AND PAY BILLS FROM ONE CONVENIENT LOCATION. YOU CAN EVEN SCHEDULE NEXT DAY AND SAME DAY PAYMENTS FOR SOME BILLS. CALL US AT 800.382.3232 OR VISIT SUNTRUST.COM TO TRY BILL PAY TODAY. SUNTRUST BANK MEMBER FDIC.

Account Summary

Account Type	Account Number	Statement Period
FREE CHECKING	[redacted]9301	07/15/2005 - 08/12/2005

Description	Amount	Description	Amount
Beginning Balance	[redacted]	Average Balance	[redacted]
Deposits/Credits		Average Collected Balance	
Checks		Number of Days in Statement Period	
Withdrawals/Debits			
Ending Balance			

Deposits/ Credits

Date	Amount	Description
[redacted]	[redacted]	

Deposits/Credits: 3 Total Items Deposited: 4

Checks

Check Number	Amount	Date Paid	Check Number	Amount	Date Paid	Check Number	Amount	Date Paid
1051	70.63	07/25	1054 6K GAS	44.33	07/21	[redacted]		
1052	46.10	07/28	1055 KELLY HOA	550.00	07/26			
1053	28.10	07/28	*1059	36.17	08/02			

Checks: 8 *Break in check sequence

Withdrawals/ Debits

Date Paid	Amount	Description
[redacted]	[redacted]	[redacted]
07/29	38.75	*ELECTRONIC/ACH DEBIT* AT&T Consumer CHECKPAYMT 1058
[redacted]	[redacted]	[redacted]
08/08	23.38	*CHECK CARD PURCHASE* SABER A. MEXICO FT WALTON BEAFL
08/08	6.88	*POINT OF SALE DEBIT* TR DATE 08/08 Wal-Mart Super Center DESTIN FL 13620006
08/08	22.97	*POINT OF SALE DEBIT* TR DATE 08/07 PUBLIX 4425 COMMONS DR DESTIN FL A90003
08/10	12.69	*CHECK CARD PURCHASE* BLOCKBUSTER VIDE DESTIN FL
08/10	28.31	*POINT OF SALE DEBIT* TR DATE 08/10 Wal-Mart Super Center DESTIN FL 13620030

EX 11

Continued on next page

SUNTRUST BANK
P O BOX 622227
ORLANDO FL 32862-2227 [redacted]

[redacted]

[redacted]
[redacted]9301
07/14/2005

SUNTRUST

Account Statement

MADELEINE J MAGILL-LOPEZ
310 SAND MYRTLE TRL
DESTIN FL 32541-3429

[redacted]

ACTIVATE YOUR VISA EXTRAS ACCOUNT ON YOUR CURRENT SUNTRUST VISA CHECK CARD AND START EARNING POINTS TOWARDS REWARDS WITH YOUR EVERYDAY PURCHASES. IT'S FREE! REDEEM FOR SHOPPING, DINING, TRAVEL, MERCHANDISE REWARDS AND MORE. GO TO WWW.VISA.COM/EXTRAS, OR CALL TOLL-FREE 800.960.8472.

Account Summary

Account Type	Account Number	Statement Period
FREE CHECKING	[redacted]9301	06/15/2005 - 07/14/2005

Description	Amount	Description	Amount
Beginning Balance	[redacted]	Average Balance	[redacted]
Deposits/Credits		Average Collected Balance	
Checks		Number of Days in Statement Period	
Withdrawals/Debits			
Ending Balance			

Deposits/ Credits

Date	Amount	Description
[redacted]	[redacted]	[redacted]

[redacted]

Deposits/Credits: 2 Total Items Deposited: 0

Checks

	Check Number	Amount	Date Paid	Check Number	Amount	Date Paid	Check Number	Amount	Date Paid
WISE →	1037	900.00	06/22	1047	58.29	06/21	1050	87.72	07/05
	*1044	120.53	06/17	1048	72.00	06/22			
OK GAS →	*1046	82.74	06/16	1049	650.97	06/28			

Checks: 7 *Break in check sequence

Withdrawals/ Debits

Date Paid	Amount	Description			
[redacted]	[redacted]	[redacted]	[redacted]		
06/16	49.62	POINT OF SALE DEBIT			TR DATE 06/16
		Wal-Mart Super Center	DESTIN	FL	13620010
06/17	22.61	CHECK CARD PURCHASE			
		ASIAN GARDEN	CRESTVIEW	FL	
06/17	4.41	POINT OF SALE DEBIT			TR DATE 06/17
		MURPHY USA	DESTIN	FL	MURC550
06/17	13.06	POINT OF SALE DEBIT			TR DATE 06/17
		Wal-Mart Super Center	DESTIN	FL	13620073
06/17	15.49	POINT OF SALE DEBIT			TR DATE 06/17
		SOU USPS 1143840955162	DESTIN	FL	00000098
[redacted]	[redacted]	[redacted]	[redacted]		
06/20	9.52	POINT OF SALE DEBIT			[redacted]
		Wal-Mart Super Center	DESTIN	FL	13620001
06/20	10.07	POINT OF SALE DEBIT			TR DATE 06/19
		Wal-Mart Super Center	DESTIN	FL	13620002
06/22	43.33	POINT OF SALE DEBIT			TR DATE 06/22
		Wal-Mart Super Center	DESTIN	FL	13620080

EX 12

116887

Continued on next page

cingular
raising the bar

[redacted]s or Changes?
cingular.com
- Toll Free 1 866 293-4634
- 611 from your wireless phone
- TTY users - 1 866 429-7TTY

FRANCIS LOPEZ
PO BOX 219
DESTIN FL 32540-0219

Date of Invoice: June 19, 2005

SUMMARY OF MONTHLY CHARGES FOR ACCOUNT [redacted]

Previous Balance	Payments Received	Late Payment Charge	Total Adjustments	Balance Forward	Current Monthly Charges
151.18	0.00	2.27	0.00	151.18	162.22
					Total Amount Due
					313.40

Your billing cycle began on May 19, 2005 and ended on June 18, 2005

Current Monthly Charges

Monthly Service	149.90
Monthly Usage	1.50
Charges	6.52
Credits	-10.00
Government Fees and Taxes	14.30
Total Current Monthly Charges	**162.22**

TOTAL AMOUNT - Due Upon Receipt **313.40**

NOW YOU CAN SHARE MORE PICTURE MESSAGES THAN EVER WITH YOUR CINGULAR PHONE. SNAP A PICTURE, PERSONALIZE IT AND SEND IT TO FRIENDS AND FAMILY WITH A CINGULAR, VERIZON OR T-MOBILE PHONE. OR, SEND IT TO ANY EMAIL ADDRESS. STANDARD USAGE CHARGES APPLY. FOR THE BEST VALUE, SHARE PICTURES WITH A MONEY-SAVING MONTHLY PICTURE MESSAGING PLAN. VISIT WWW.CINGULAR.COM/MULTIMEDIAMESSAGING FOR MORE INFO.

Note: =>
We Print on

Ex 13

NOVEON SYSTEMS, INC. 5188

Cingular Wireless 7/7/2005

Date	Type	Reference	Original Am	Balance Due	Discoun	Payment
07/07/2	Bill		151.18	151.18		151.18
					Check Amoun	151.18

Compass 151.18

Ex 13-2

982(a)(15.2)

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, state bar number, and address):	FOR COURT USE ONLY
Timothy P. Dillon, Esq. sbn 190839 Dillon & Simonsen, APC 4660 La Jolla Village Dr., Suite 775 San Diego, CA 92122 TELEPHONE NO.: 858-587-1800 FAX NO.: 858-587-2587 ATTORNEY FOR (Name): Alan Stanly	
NAME OF COURT: San Diego Superior Court, North Co. STREET ADDRESS: 325 South Melrose MAILING ADDRESS: CITY AND ZIP CODE: Vista, CA 92081 BRANCH NAME: North County Branch	
PLAINTIFF/ PETITIONER: Francis Lopez DEFENDANT/ RESPONDENT: Alan Stanly	
DEPOSITION SUBPOENA **For Production of Business Records**	CASE NUMBER: GIN 029692

THE PEOPLE OF THE STATE OF CALIFORNIA, TO ***(name, address, and telephone number of deponent, if known)*****:**
Citicorp Credit Services, Inc. USA c/o Ct Corporation System
818 West 7th Street, Los Angeles, CA 90017

1. **YOU ARE ORDERED TO PRODUCE THE BUSINESS RECORDS described in item 3, as follows:**

To *(name of deposition officer)*: Knox Services
On *(date)*: 03/25/05 At *(time)*: 8:00 AM
Location *(address)*: 2250 FOURTH AVENUE, SAN DIEGO CA 92101

Do not release the requested records to the deposition officer prior to the date and time stated above.

a. ☐ by delivering a true, legible, and durable copy of the business records described in item 3, enclosed in a sealed inner wrapper with the title and number of the action, name of witness, and date of subpoena clearly written on it. The inner wrapper shall then be enclosed in an outer envelope or wrapper, sealed, and mailed to the deposition officer at the address in item 1.

b. ☐ by delivering a true, legible, and durable copy of the business records described in item 3 to the deposition officer at the witness's address, on receipt of payment in cash or by check of the reasonable costs of preparing the copy, as determined under Evidence Code section 1563(b).

c. ☒ by making the **original** business records described in item 3 available for inspection at your business address by the attorney's representative and permitting **copying** at your business address under reasonable conditions during normal business hours.

2. *The records are to be produced by the date and time shown in item 1 (but not sooner than 20 days after the issuance of the deposition subpoena, or 15 days after service, whichever date is later). Reasonable costs of locating records, making them available or copying them, and postage, if any, are recoverable as set forth in Evidence Code section 1563(b). The records shall be accompanied by an affidavit of the custodian or other qualified witness pursuant to Evidence Code section 1561.*

3. **The records to be produced are described as follows:**

☑ Continued on Attachment 3.

4. **IF YOU HAVE BEEN SERVED WITH THIS SUBPOENA AS A CUSTODIAN OF CONSUMER OR EMPLOYEE RECORDS UNDER CODE OF CIVIL PROCEDURE SECTION 1985.3 OR 1985.6 AND A MOTION TO QUASH OR AN OBJECTION HAS BEEN SERVED ON YOU, A COURT ORDER OR AGREEMENT OF THE PARTIES, WITNESSES, *AND* CONSUMER OR EMPLOYEE AFFECTED MUST BE OBTAINED BEFORE YOU ARE REQUIRED TO PRODUCE CONSUMER OR EMPLOYEE RECORDS.**

DISOBEDIENCE OF THIS SUBPOENA MAY BE PUNISHED AS CONTEMPT BY THIS COURT. YOU WILL ALSO BE LIABLE FOR THE SUM OF FIVE HUNDRED DOLLARS AND ALL DAMAGES RESULTING FROM YOUR FAILURE TO OBEY.

Date issued: 2-24-05

Timothy P. Dillon
(TYPE OR PRINT NAME)

(SIGNATURE OF PERSON ISSUING SUBPOENA)

Attorney
(TITLE)

(Proof of service on reverse)

Attachment to Deposition Subpoena for Production of Business Records

The documents to be produced are described as follows:

All documents, files, records, statements, records of payment, and all copies of checks issued for payments for the following Citibank Advantage Credit Card Account:

Citibank Advantage
Account No. 5424180306665024
Francis Lopez

14-2

Cards

American Express Cards
777 American Expressway
Ft. Lauderdale, FL 33337

March 11, 2005

Francis J. Lopez
PO Box 219
Destin, FL 32540-0219

American Express Card Account(s): 3783-498022-83607, 3715-418391-81009 &
3782-621647-85008
Our File #05067DHS1502425

Dear Madam:

I am writing this letter to advise you that American Express Travel Related Service Company, Inc. / American Express Centurion Bank has been served with a subpoena ordering the production of certain information and/or documents relative to your account(s).

We are legally obligated to comply with this request and are therefore in the process of compiling the requested documents. You have the right to retain counsel and take any action you deem necessary to prevent production of the records and information. If we do not hear from you within fourteen (14) days from the date of this letter your records will be produced.

Very truly yours,

Cathy Bazal

Cathy Bazal, Subpoena Correspondent
Assistant to the Custodian of Records
American Express
(954) 503-7001 ext. 65544

14-3

verizonwireless [redacted]

P.O.BOX 105378
ATLANTA, GA 30348

December 4, 2005

Page 1 of 3

Account number
819553806-00001
Invoice number
1138911044

To Make A Payment
Online: verizonwireless.com (My Account)
Phone: #PMT (#768) or #BAL (#225) from your wireless phone. Airtime free.
Mail Payment: Verizon Wireless
PO Box 660108
Dallas, TX 75266-0108

Contact Us
Online: verizonwireless.com
Phone: *611 or 1-800-922-0204 Airtime free.
Mail Letters: Verizon Wireless
P.O.Box 105378
Atlanta, GA 30348

10000457 1 AT 0.282 00 AUTO T2 0 2204E 32541-3429 HO003B402

FRANCIS J LOPEZ
310 SAND MYRTLE TRL
DESTIN FL 32541-3429

Account summary

Previous charges

Previous balance	$37.98
Payment received 11/19 - Thank you	-37.98
Balance forward	$.00

Current charges

Total current charges	$.00
Total Amount	**$.00**

A late payment charge applies for unpaid balances. The charge is the greater of $5 or 1.5% per month or as permitted by law, and are liquidated damages, not a penalty.

---

verizonwireless

Payment coupon

Please return this portion with your check or money order made payable to Verizon Wireless.

FRANCIS J LOPEZ
310 SAND MYRTLE TRL
DESTIN, FL 32541-3429

Bill date	December 4, 2005	VE
Account number	819553806-00001	
Invoice number	1138911044	

Balance forward	$.00
Current charges	$.00
COURTESY BILL	$.00
DO NOT PAY	

Amount enclosed

☐.☐☐

PO BOX 660108
DALLAS, TX 75266-0108

☐ Check here and fill out the back of this slip if your billing address has changed or you are adding or changing your email address.

11389110440108195538060000100000000000000000005

Ex 15-1

verizon wireless

Bill date December 4, 2005
Account number 819553886-00001
Invoice number 1138911044

Summary of current charges

Charges for	Page number	Account charges & credits	Monthly charges	Usage charges	Equipment charges	VZW surcharges and other charges and credits	Taxes, governmental surcharges and fees	Total charges
Your account	1	$.00	$.00	$.00	$.00	$.00	$.00	$.00
Total current charges		**$.00**	**$.00**	**$.00**	**$.00**	**$.00**	**$.00**	**$.00**

15-2

Control #: 10000457 00001269

[redacted]

verizonwi[redacted]s

P.O.BOX 105378
ATLANTA, GA 30348

November 4, 2005

Account number
819553806-00001
Invoice number
1129791624

To Make A Payment

Online: verizonwireless.com (My Account)
Phone: #PMT (#768) or #BAL (#225) from your wireless phone. Airtime free.
Mail Payment: Verizon Wireless
PO Box 660108
Dallas, TX 75266-0108

Contact Us

Online: verizonwireless.com
Phone: *611 or 1-800-922-0204 Airtime free.
Mail Letters: Verizon Wireless
P.O.Box 105378
Atlanta, GA 30348

60000449 1 AT 0.292 00 AUTO T3 0 2104E 32541-3429 1 HOMG0492

FRANCIS J LOPEZ
310 SAND MYRTLE TRL
DESTIN FL 32541-3429

Verizon Wireless news

Save Time and Money
It has never been easier to enroll in Auto Bill Pay. See bottom of page 2 for details.

Account summary

Previous charges

Previous balance	$65.58
Payment - no payment received	.00
Balance forward	$65.58

Current charges

Monthly charges	-23.50
Verizon Wireless surcharges and other charges and credits	-.39
Taxes, governmental surcharges and fees	-3.71
Total current charges	-$27.60
Total Amount	**$37.98**

A late payment charge applies for unpaid balances. The charge is the greater of $5 or 1.5% per month or as permitted by law, and are liquidated damages, not a penalty.

Our records indicate your account is past due. Please send payment now to avoid service disruption. To confirm recent payments or pay your bill, dial #PMT and SEND airtime free from your wireless phone or login to My Account at VerizonWireless.com.

15-3

NOVEON SYSTEMS, INC. 5227

Verizon Wireless [redacted] [redacted]11/16/2005

Date	Type	Reference	Original Am	Balance Due	Discoun	Payment
11/16/2	Bill	1129791624	37.98	37.98		37.98
					Check Amoun	37.98

Compass 37.98

15-4

CURD, GALINDO & SMITH, LLP
301 East Ocean Boulevard
Suite 460
Long Beach CA 90802

Invoice submitted to:
Francis Lopez
Madeleine Magill Lopez
P.O. Box 219
Destin FL 32540

June 2, 2005
In Reference To: Personal Matters

	Amount
Previous balance	$900.00
Balance due	$900.00

Ex 16

PROOF OF SERVICE

STATE OF CALIFORNIA)
)ss.:
SOUTHERN DISTRICT)

In re
Francis J. Lopez — *Case No. 05-05926-PBINV*

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is 21800 Oxnard St. Suite 840, Woodland Hills, CA 91367.

On June 12, 2006 I served on interested parties in said action the within:

Declaration of Francis Lopez in Opposition to Petitioning Creditors' Motion for Summary Judgement.

by placing a true copy thereof in sealed envelope(s) addressed as stated below.

L. Scott Keehn
Sarah H. Lanham
ROBBINS & KEEHN, APC
530 B Street, Suite 2400
San Diego, CA 92101

I am readily familiar with this firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. postal service on that same day in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than 1 day after date of deposit for mailing in affidavit.

Executed on June, 12, 2006 at Woodland Hills, California.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

CASSIDY HAYES
~~[illegible]~~
(Type or print name)

(Signature)

LAW OFFICES
M. Jonathan Hayes
21800 Oxnard St. Suite 840
Woodland Hills, CA 91367

L. Scott Keehn, SBN 61691
Leslie F. Keehn, SBN 199153
KEEHN & ASSOCIATES
A Professional Corporation
402 West Broadway, Suite 1210
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Telephone: (619) 400-2200

Attorneys for **Appellee**

UNITED STATES BANKRUPTCY COURT

FOR THE SOUTHERN DISTRICT OF CALIFORNIA

In Re:	Case No. 05-05926-PB7
FRANCIS J. LOPEZ, Debtor.	APPEAL NO. 2
FRANCIS J. LOPEZ, Appellant,	**APPELLEE'S SUPPLEMENTAL RECORD ON APPEAL**
v.	**[VOLUME 6 OF 9]**
ALAN STANLY, Appellee.	Judge: The Honorable Peter W. Bowie Ctrm: 4

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KEEHN & ASSOCIATES, APC
ATTORNEYS AND COUNSELORS AT LAW
402 WEST BROADWAY, SUITE 1210
SAN DIEGO, CALIFORNIA 92101
TELEPHONE (619) 400-2200 · FACSIMILE (619) 400-2201

DOCKET NUMBER 67

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Leslie F. Keehn (SBN 199153)
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Attorneys for **Petitioning Creditors**

UNITED STATES BANKRUPTCY COURT

SOUTHERN DISTRICT OF CALIFORNIA

In Re: FRANCIS J. LOPEZ, Alleged Debtor	Case No. 05-05926-PBINV Involuntary Chapter 7 **ERRATA TO THE MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF PETITIONING CREDITORS' MOTION FOR SUMMARY JUDGMENT (BIFURCATED PHASE - 1)** Date: June 26, 2006 Time: 2:00 p.m. Judge: The Honorable Peter W. Bowie Ctrm: 4

Attached hereto and incorporated herein by this reference is the "Table of Authorities" which was inadvertently omitted from the "**Memorandum of Points and Authorities in Support of Petitioning Creditors' Motion for Summary Judgment (Bifurcated Phase - 1)**" filed with the Court on May 29, 2006, and identified as Docket Item No. 56.

Dated: June 14, 2006

ROBBINS & KEEHN
A Professional Corporation

By: //s// L. Scott Keehn
L. Scott Keehn
Leslie F. Keehn
Attorneys for Petitioning Creditors

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TABLE OF AUTHORITIES

FEDERAL CASES

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Facsimile: 619-544-9095

Attorneys for **Petitioning Creditors**

UNITED STATES BANKRUPTCY COURT

FOR THE SOUTHERN DISTRICT OF CALIFORNIA

In re: **FRANCIS J. LOPEZ,** **Alleged Debtor.**	**CASE NO. 05-05926-PBINV** **Involuntary Chapter 7** **PROOF OF SERVICE**

I, the undersigned, declare, that I am over the age of eighteen years and not a party to this cause. I am employed in, or am a resident of, the County of San Diego, California, and my business address is: Robbins & Keehn, APC, 530 B Street, Suite 2400, San Diego, California.

On the date shown below, I caused to be served the following document(s):

ERRATA TO THE MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF PETITIONING CREDITORS' MOTION FOR SUMMARY JUDGMENT (BIFURCATED PHASE - 1)

[ ] BY PERSONAL SERVICE: I placed a true copy of the above document(s) in a sealed envelope clearly labeled to identify the attorney for the party being served, and personally caused

ROBBINS & KEEHN, APC
ATTORNEYS AT LAW
2400 UNION BANK BUILDING · 530 "B" STREET
SAN DIEGO, CALIFORNIA 92101
TELEPHONE (619) 232-1700 · TELECOPIER (619) 544-9095

said such envelope to be personally delivered on each addressee named hereafter:

[ ] BY FACSIMILE AND MAIL: I declare that upon the prior agreement of the party being served, I served the above named documents by facsimile transmission during usual office hours from facsimile number 619-544-9095, to a facsimile machine maintained by the person on whom it is served and that the transmission was reported as complete and without error. Thereafter, I mailed (by first-class mail, postage prepaid) a true copy to each addressee named hereafter:

[X] BY MAIL: I declare that I am readily familiar with the business practice for collection and processing of correspondence for mailing with the United States Postal Service, that the correspondence shall be deposited with the United States Postal Service this same day in the ordinary course of business; and that a true copy was placed in a separate envelope, with postage thereon fully prepaid for each addressee named hereafter:

United States Trustee
Department of Justice
402 West Broadway, Suite 600
San Diego, CA 92101

M. Jonathan Hayes
Law Office of M. Jonathan Hayes
21800 Oxnard Street, Suite 840
Woodland Hills, CA 91367

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Executed on June 14, 2006.

//s// Cynthia K. Lay
CYNTHIA K. LAY

ROBBINS & KEEHN, APC
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UNITED STATES BANKRUPTCY COURT

SOUTHERN DISTRICT OF CALIFORNIA

In Re: FRANCIS J. LOPEZ, Alleged Debtor	Case No. 05-05926-PBINV Involuntary Chapter 7 **PETITIONING CREDITORS' MEMORANDUM OF POINTS AND AUTHORITIES IN OPPOSITION TO ALLEGED DEBTOR'S MOTION FOR SUMMARY JUDGMENT AND ORDER DISMISSING INVOLUNTARY PETITION** Date: June 26, 2006 Time: 2:00 p.m. Judge: The Honorable Peter W. Bowie Ctrm: 4

Petitioning Creditors respectfully submit the following Memorandum of Points and Authorities in support of their opposition to the alleged debtor Francis J. Lopez's ("Lopez") Motion for Summary Judgment and Order Dismissing the Involuntary Petition.

/ / /

/ / /

/ / /

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1. **This Court's Bifurcation Order Postponed a Discovery on the Phase Two Issue (Whether or Not Lopez was Paying His Debts as They Come Due) and it is Profoundly Prejudicial to Subject the Petitioning Creditors to the Risk of Adverse Summary Adjudication Before They are Permitted to Complete Their Discovery .... Page 13**

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TABLE OF AUTHORITIES

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I. INTRODUCTION

Fifty-two days before this petition was filed Lopez testified under oath that he could not think of any more than seven creditors, and those included his father and his brother.[1] Four months later he testified by declaration in this case that in the 52 days following his original testimony, the number climbed to twenty-one.[2] This changed testimony actually adds sixteen creditors that were unmentioned in the original testimony because Exhibit A to the 9/19/06 Lopez Declaration does not include obligations that he owed to his father and his brother. That is an increase of 300 percent, and casts a long shadow of suspicion over the newer and more purpose-driven testimony, which must be stricken under the Sham Affidavit rule.[3]

Suspicious testimony aside, the record is sufficiently developed to show that there is no material controversy over the documented facts that show that the number of creditors eligible to be included in the count of creditors as described in § 303 (b)(2) (the "Section 303 Count") is well below twelve.

But identifying the number of his creditors would not be the only time when Lopez would *flip-flop* in this case. He asked for, and obtained, this court's order bifurcating the proceeding into two phases – the first addressing the question of whether an adequate number of creditors had joined the petition ("Phase One"), and the latter addressing, if necessary, the Section 303 (h)(1) issue of whether or not Lopez was generally paying his debts as they came due in the June 30, 2005, time frame ("Phase Two").[4] The purpose of that bifurcation order was to protect Lopez from the burdens of discovery and trial on the Phase Two issue if Stanly/petitioning creditors were unable to prevail on the Phase One issue. From the time the bifurcation order was issued to this day, Lopez has enjoyed the benefits and protections of the bifurcation order. Now – at a time when the petitioning creditors have been precluded from discovery on the Phase Two issue – Lopez seeks to subject them to the risk of an adverse determination of that question through summary judgment. Both common sense, and the Federal Rules of Civil Procedure,[5] dictate the avoidance of such an unfair result, and deny Lopez relief through summary adjudication of that issue until petitioning creditors have had an adequate opportunity to complete their discovery.[6]

---

[1] See Creditors Statement of Undisputed Facts filed concurrently herewith ("CSUF") Number 164-170.

[2] See Docket Item 25– "Declaration of Francis J. Lopez re: Creditors" filed September 19, 2005 (the "9/19/05 Lopez Decl.") at ¶ 2 and Exhibit A attached thereto. There are actually 22 creditors listed on Exhibit A, but it includes Stanly, and the original testimony excluded Stanly. So the entry for Stanly is ignored for purposes of comparison.

[3] See Part III.A. below.

[4] See Docket item 35.

This ill-conceived attempt to artfully dodge the Phase Two issue purports to be supported by conclusory testimony which is inadequate to its purpose by, among other things, its complete lack of evidentiary detail. That lack of specific evidence may well be explained by the fact that no such evidence exists. That inference is supported by considerable evidence produced by Lopez and garnered without the benefit of the Phase Two discovery that demonstrates a general pattern of non-payment of his obligations as they come due in the relevant time frame. Lopez now candidly admits that he does not always pay his debts as they come due.[7] Although Lopez is not entitled to defeat the petitioning creditors claims without providing an opportunity to complete their Phase Two discovery, the process may have already generated all the evidence that it takes for the court to rightly conclude that based upon uncontroverted facts, Lopez was not generally paying his debts as they came due in the June 30, 2005, time frame. So while the petitioning creditors may not suffer an adverse determination of the Phase Two issue at this phase, Lopez might.[8]

In sum, the uncontroverted facts, and competent evidence now lead inevitably to the conclusion that this involuntary petition can be adequately supported by a single creditor. Beyond

---

5 FRCP 59(f)

6 See III.C. below.

7 CSUF 176.

8 *Celotex Corp. V. Catrett,* 477 U.S. 317, 326 (1986)("district courts are widely acknowledged to possess the power to enter summary judgments *sua sponte*, so long as the losing party was on notice that she had to come forward with all of her evidence"); *Rhodes Inc. v. Morrow,* 937 F.Supp. 1202, 1209 (M.D.N.C. 1996)("Summary Judgment may be granted in favor of a non-movant.").

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that, the uncontroverted evidence suggests that Lopez was not generally paying his debts when they came due when the petition was filed.

II. SUMMARY OF UNDISPUTED FACTS[9]

A. Lopez Has Fewer than 12 Qualifying Creditors Under 11 U.S.C. §303(b)

For the reasons set forth in the Creditors' Statement of Undisputed Facts ["CSUF"] 3 through 163, it becomes apparent that none of the creditors identified on the creditor list can be included in the Creditor List for the reasons summarized below:

1. **Allstate Floridian.** This entity did not hold a claim against the debtor on June 30, 2005. [CSUF 35-40]

2. **American Express.** This entity held no claim against Lopez on June 30, 2005. [CSUF 41-43]

3. **American Home Shield.** This entity did not hold a claim against Lopez on June 30, 2005. [CSUF 44-46]

4. **Bank of America.**

(a) Bank of America received pre-petition preference payments from Lopez. [CSUF 47-54]

(b) Bank of America received post-petition payments on account of its pre-petition claim. [CSUF 55-56]

5. **Bankcard Services.**

(a) This entity's claim was subject to a bona fide dispute over the unilateral imposition of late charges which occur in light of an automatic transfer provision. [CSUF 60]

(b) This creditor received voidable preference payments between April 1 and June 30, 2005. [CSUF 57-59]

6. **Cingular Wireless.**

(a) This entity received pre-petition preference payments on June 19, 2005. [CSUF 61-63]

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[9] See CSUF for details.

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(b) Cingular received payments that fully satisfied any pre-petition obligation before January 10, 2006. [CSUF 64]

7. **Citicards.** This creditor received pre-petition preference payments on April 18, 19, May 18, 19 and June 20. [CSUF 65-72]

8. **Coastal Community Insurance.** This entity held no claim against Lopez on June 30, 2005 [CSUF 73-78]

9. **Cox Communications.** This entity received post-petition payments that fully satisfied its pre-petition obligation at some point after June 30, 2005, but before April 27, 2006. [CSUF 79-81]

10. **Ft. Walton Beach Medical Center.** This claim is subject to a bona fide dispute as to liability based upon factual misrepresentations made to Lopez in the process of his admission. [CSUF 82-84]

11. **Household Bank.** This creditor received pre-petition payments on its antecedent obligations between April 1, 2005, and June 30, 2005, including, but necessarily limited to, payments made on May 16 and 17, 2005. [CSUF 85-90]

12. **Kelly Plantation Owners Association.** At some time after June 30, 2005, but before December 12, 2005, the pre-petition obligation owed to this entity had been paid in full. [CSUF 91-95]

13. **Northwest Florida Daily News.**

(a) This creditor did not hold a claim against Lopez on June 30, 2005, because on May 17, 2005, his subscription had been pre-paid for a 3-month period. [CSUF 98]

(b) This entity also received pre-petition payments on its antecedent debt which are avoidable preferences. [CSUF 96, 97, 99 & 100]

14. **Okaloosa Gas District.**

(a) This entity received payments that are voidable as preferences including, but not necessarily limited to, those made on May 3, May 19 and June 19, 2005. [CSUF 101-104]

(b) This entity also received post-petition payments that fully satisfied its pre-petition claim. [CSUF 105-111]

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15. **Progressive Insurance.** This entity did not hold a claim against Lopez on June 30, 2005, because the premiums due for the policy in force had been previously paid. [CSUF 112-115]

16. **Citibank/Quicken Platinum Card.**

(a) This entity received voidable preference payments on, but not necessarily only on, May 2 and June 27, 2005. [CSUF 116-118]

(b) This entity also received post-petition payments on account of its pre-petition obligations. [CSUF 119-120]

17. **Alan Stanly.** He is an insider as a matter of law because both he and Lopez own 50% of Prism Technologies. [CSUF 121 & 12 and 11U.S.C §§ 101 (31)(E) [Insider includes affiliates or insiders of affiliates] and 101 (3)(B) [affiliate]]

18. **Texaco/Shell.**

(a) This entity received voidable preference payments on, but not necessarily only on, April 4 and May 10, 2005. [CSUF 123-126]

(b) This entity received post-petition payments on account of its pre-petition obligation on, but not necessarily only on, August 9, September 26 and October 25, 2005. [CSUF 126-131]

19. **Union Bank.**

(a) This entity received payments on account of its antecedent debt on, but not necessarily only on, April 13 and May 18, 2005. [CSUF 148-152]

(b) This entity received payments on its pre-petition obligation on July 8, August 8, September 8, October 6, October 31, November 7 & December 12, 2005, and January 11, 2006. [CSUF 148-163]

(c) All payments received by Union Bank on or after April 1, 2005 were payments made in settlement of the bank's litigation claim against Lopez [CSUF 149, 154, 155, 158, 159, 161, and 162]

20. **Valley Forge Life Insurance.** This entity did not hold a claim against Lopez on June 30, 2005, because Lopez is not the account debtor on this obligation — his wife Madeleine is. [CSUF 132-137]

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21. Verizon Wireless.

(a) This obligation was subject to a bona fide dispute as to the amount of the obligation. Verizon claimed $262.47 due and Lopez disputed all amounts in excess of $35. [CSUF 139-141].

(b) On August 3, 2005, Verizon received a payment in full of its obligation due as of June 30, 2005. [CSUF 141]

22. Wayne Wise. On May 17, 2005, this entity received a $900 payment on account of its antecedent debt. That payment was not in accordance with the customary terms established between the debtor and that claimant. [CSUF 142-146]

B. There is Already Evidence to Show That Lopez Was Not Generally Paying His Debts as They Came Due in the June 30, 2005, Time Frame

Although it is premature to resolve this issue adversely to the petitioning creditors because of the court's earlier bifurcation order (see part III.C. below), the evidence already available indicates that Lopez was not generally paying his debts as they came due in the June 30, 2005, time frame. As of the petition date, Lopez's overall financial state was dismal. Approximately three months before the petition date, Lopez was continually incurring late fees, and failing to timely pay the following creditors: **Bankcard Services; Bank of America; Household Bank; Northwest Florida Daily News; Okaloosa Gas; Progressive Insurance; Texaco/Shell; and Wayne Wise**. The only creditors Lopez was timely paying were those that provided necessary services which would be terminated for non-payment: **Cox Communications; and Cingular Wireless**. The remaining creditors listed on Lopez's answer are not relevant to this Court's determination of whether Lopez was paying his debts as they came due because either: (a) their claims are disputed **[Ft. Walton Beach Medical Center, Alan Stanly, and Verizon Wireless]**; (b) they did not become creditors until after the petition date **[Allstate Floridian, American Home Shield, Coastal Community Insurance, Kelly Plantation Owners Association, and Valley Forge Life Insurance]**; or (c) the creditor disclaimed the debt **[American Express]**.

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III. ARGUMENT

A. THE LOPEZ DECLARATION IN SUPPORT OF HIS SUMMARY JUDGMENT MOTION ("LOPEZ SJM DECL") IS A "SHAM AFFIDAVIT" WHICH MUST BE STRICKEN.

The Ninth Circuit follows what is commonly referred to as the "Sham Affidavit" rule. This principle precludes a party from utilizing either new declarations, or specious corrections to prior deposition testimony [both referred to as "Sham Affidavits"] to support their position in the context of a summary judgment motion.[10] The rule is well accepted among circuits in addition to the Ninth Circuit, and is specifically followed in at least the Third Circuit,[11] the Seventh Circuit[12], and Eighth Circuit.[13] The purpose of the "Sham Affidavit" rule has been explained by various courts as follows:

> The very purpose of summary judgment under Rule 56 is to prevent "the assertion of unfounded claims or the interposition of specious denials or sham defenses ···"10 C. Wright, A. Miller & M. Kane, *Federal Practice and Procedure* § 2712 (1983). If a party who has been examined at length on deposition could raise an issue of fact simply by submitting an affidavit contradicting his own earlier testimony, this would greatly diminish the utility of summary judgment as a procedure for screening out sham issues of fact. *Id.* We emphasized that while summary judgment "is to be reserved for those cases in which there is no genuine material issue of fact for determination," if "testimony under oath ··· can be abandoned many months later by the filing of an affidavit, probably no cases would be appropriate for summary judgment." *Id.* No party should be allowed to create "issues of credibility" by contradicting his own previous testimony.[14]

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[10] *Hambleton Bros. Lumber Co. v. Balkin Enterprises, Inc.* 397 F.3d 1217, 1225 (C.A.9 (Or.),2005) citing *Kennedy v. Allied Mut. Ins. Co.,* 952 F.2d 262, 266 (9th Cir.1991).

[11] *Martin v. Merrell Dow Pharmaceuticals, Inc.* 851 F.2d 703, 706 (C.A.3 (Pa.),1988)

[12] *U.S. v. Funds in the amount of $30,670* 403 F3d 448, 466 (C.A. 7 (ILL.), 2005).

[13] *City of St. Joseph, Mo. v. Southwestern Bell Telephone 439 F.3d 468,* (475 -476 (C.A.8 (Mo) 2006), citing *Camfield Tires, Inc. v. Michelin Tire Corp.,* 719 F.2d 1361, 1363 - 1366 (8th Cir.1983).

[14] *City of St. Joseph, Mo. v. Southwestern Bell Telephone* 439 F.3d 468 (475 -476 (C.A.8 (Mo) 2006), citing *Camfield Tires, Inc. v. Michelin Tire Corp.,* 719 F.2d 1361, 1363 - 1366 (8th Cir.1983); In accord if a party who has been examined at length on deposition could raise an issue of fact simply by submitting an affidavit contradicting his own prior testimony, this would greatly diminish the utility of summary judgment as a procedure for screening out sham issues of fact, see also *Martin v. Merrell Dow Pharmaceuticals, Inc.* 851 F.2d 703, 706 (C.A.3(Pa.),1988).

The same thought was noted by the 7th Circuit:

> This is why courts do not countenance the use of so-called "sham affidavits," which contradict prior sworn testimony, to defeat summary judgment.[15]

The logic of, and purposes served by the rule apply with equal force where, as here, the "Sham Affidavit" is offered to secure rather than evade summary judgment.

This "Sham Affidavit" rule is not an arcane or esoteric legal concept. Rather, it is the reflection of a basic and intuitive reality. That is: *Truth is constant.* It does not change in a way that allows witnesses to alter their testimony to meet the perceived requirements of their position in a summary judgment motion. That would be an anathema to the overarching purpose of every aspect of civil litigation, which is to seek out and find the truth, so that the law might be applied to that truth.

Lopez presents a prime example of both the utility and propriety of the "Sham Affidavit" rule. A review of his testimony as referenced in the Petitioning Creditors' Evidentiary Objections filed concurrently herewith ("Objections") – specifically with reference to Objections 2, 4, 7 and 9 – demonstrates his willingness to give different testimony at various times, presumably to conform to whatever his perception of his best interests at the moment may be. Such propensities are not tolerated in the context of federal litigation, and the "Sham Affidavit" rule has been developed as a principle to prevent the process from becoming contaminated by contrived after-the-fact testimony.

Lopez was first examined at length as to the identity of his creditors in the May, 9, 2005 deposition/examination.[16] At most he could identify seven such creditors, and allowed for the

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[15] *U.S. v. Funds in Amount of Thirty Thousand Six Hundred Seventy Dollars* 403 F.3d 448, 466 (C.A.7 (Ill.) 2005)[Summary judgment would be meaningless if litigants could manufacture genuine issues of material fact through self-serving and unsupported "admissions" materially different from positions taken in the past. This is why courts do not countenance the use of so-called "sham affidavits," which contradict prior sworn testimony, to defeat summary judgment], citing *Bank of Ill. v. Allied Signal Safety Restraint Sys.*, 75 F.3d 1162, 1168-69 (7th Cir.1996) ["We have long followed the rule that parties cannot thwart the purposes of Rule 56 by creating 'sham' issues of fact with affidavits that contradict their prior depositions···· If such contradictions were permitted, ···'the very purpose of the summary judgment motion-to weed out unfounded claims, specious denials, and sham defenses-would be severely undercut.' "]

[16] See Exhibit A to the Declaration of Alan Stanly filed concurrently herewith.

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possibility that there might be one or two more that he could not think of at the time.[17] He now uses his declaration as a "Sham Affidavit" in an attempt to disavow the earlier testimony and substitute the newly manufactured statements that better suit his purpose at this point in time. This more purposefully crafted testimony runs afoul of both the principles and policies of promoting the integrity of the judicial process that the "Sham Affidavit" rule is designed to serve. The Lopez SJM Decl. cannot stand.

The Lopez SJM Decl. also has contrived testimony which must be stricken under the "Sham Affidavit" doctrine which is now offered to support his contention that he had mortgage obligations and other secured creditors that he was paying timely,[18] that Stanly is not an "insider" subject to exclusion in the § 303 Count,[19] and to assert that none of his putative creditors held claims that were subject to a dispute as of June 30, 2005.[20] All of this evidence must be stricken, and excluded from consideration in support of the Lopez summary judgment motion under the "Sham Affidavit" rule.

When the Sham Affidavit is stricken there is no putative evidence to support Lopez's motion for summary judgment.

B. Lopez is Not Entitled to Summary Judgment on the Contention That he has 12 or More Creditors in the "Section 303 Count" (the Phase-One Issue)

1. Summary Judgment Standard

Summary judgment is authorized under Rule 56 of the Federal Rules of Civil Procedure ("FRCP"), made applicable hereto by Rules 7056 and 9014 of the Federal Rules of Bankruptcy Procedure. "Where the operative facts are substantially undisputed, and the heart of the controversy is the legal effect of such facts, such a dispute effectively becomes a question of law

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17 CSUF No. 164-170.

18 See Objection No. 4.

19 See Objection No. 7.

20 See Objection No. 9.

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that can, quite properly, be decided on summary judgment."[21] To qualify for summary judgment, the moving party must meet this standard with evidence that is recognized as being admissible.[22] This is a standard that Lopez has not and can not meet. As more fully appears from the Objections filed concurrently herewith, all of the sparse evidence proffered on this issue is inadmissible, and his declaration in that regard must be stricken. The Lopez evidence does not meet the recognized standard for summary judgment.

2. Lopez Has Offered No Admissible Evidence Establishing 12 or More Qualifying Creditors

Lopez's Motion rests solely on the claim that petitioning creditors bear the burden of establishing that Lopez has fewer than 12 qualifying creditors under 11 U.S.C. §303(b). Lopez provides no specific evidence whatsoever pertaining to any of the 22 creditors he listed in his answer. In response, petitioning creditors incorporate the arguments and specific analysis of each of the 22 listed creditors proffered in their Motion for Summary Judgment (Bifurcated Phase - 1).[23] The specific analysis of each listed creditor is summarized in the chart below:

Creditors Listed in Lopez's Answer	Included in §303(b)(2) Count	Excluded Because
ALLSTATE FLORIDIAN (Homeowners Insurance)	NO	Non-Creditor (Post-Petition Debt)
AMERICAN EXPRESS (Credit Card)	NO	Non-Creditor (Disclaims Debt)
AMERICAN HOME SHIELD (Insurance)	NO	Non-Creditor (Post-Petition Debt)
BANK OF AMERICA (Credit Card)	NO	§547 & §549

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[21] *F.T.C. v. Gill*, 71 F.Supp.2d 1030, 1035 (C.D.Cal. 1999); *In re Mercer*, 169 B.R. 694, 696 (Bkrtcy. W.D.Wash. 1994).

[22] FRCP 56(e); *Orr v. Bank of America, NT & SA*,285 F.3d 764, 773 (9th Cir. 2002) ("A trial court can only consider admissible evidence in ruling on a motion for summary judgment").

[23] Docket Items 56-60.

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Creditors Listed in Lopez's Answer	Included in §303(b)(2) Count	Excluded Because
BANKCARD SERVICES (Credit Card)	NO	Disputed & §547
CINGULAR WIRELESS (Mobile Phone)	NO	§547 or §549
CITI CARDS (Credit Card)	NO	§547
COASTAL COMMUNITY INSURANCE (Property Insurance)	NO	Non-Creditor (Post-Petition Debt)
COX COMMUNICATIONS (Television and Internet)	NO	§549
FT. WALTON BEACH MEDICAL CENTER (Emergency Room/Medical Services)	NO	Disputed
HOUSEHOLD BANK / HSBC (Credit Card)	NO	§547
KELLY PLANTATION OWNERS ASSOCIATION (Homeowners Association)	NO	§549
NORTHWEST FLORIDA DAILY NEWS (Newspaper)	NO	Non-Creditor (Pre-Paid) & §547
OKALOOSA GAS DISTRICT (Utilities)	NO	§547 & §549
PROGRESSIVE INSURANCE (Auto Insurance)	NO	Non-Creditor (Post-Petition Debt)
QUICKEN PLATINUM CARD (Credit Card)	NO	§547 & §549
STANLY, ALAN (Judgment Creditor)	NO	Insider
TEXACO/SHELL (Gasoline Credit card)	NO	§547 & §549
UNION BANK OF CALIFORNIA (Settlement)	NO	§547 & §549
VALLEY FORGE LIFE INSURANCE (Life Insurance)	NO	Non-Creditor
VERIZON WIRELESS (Mobile Phone)	NO	Disputed & §549

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Creditors Listed in Lopez's Answer	Included in §303(b)(2) Count	Excluded Because
WISE, WAYNE (Personal Loan)	NO	§547

Against this background the only evidence proffered by Lopez in support of his summary judgment motion on the Phase One issue is his own declaration.[24] In addition to the evidentiary objections which require the substantive portions of that declaration to be stricken, it is also flawed by its lack of presentation of any "evidentiary facts" as distinguished from conclusory statements. It is well settled that a motion for summary judgment must be supported by evidentiary facts, and mere conclusory allegations – whether in the form of a declaration or otherwise – are not sufficient.[25] The Lopez summary judgment motion is supported by no evidentiary facts, and is limited to bald conclusions unsupported by evidence. Those conclusory statements are insufficient to entitle Lopez to the summary adjudication that he seeks.

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C. Lopez is Not Entitled to Summary Adjudication on His Assertion That He Was Generally Paying His Debts as They Came Due in the June 30, 2005, Time Frame

1. This Court's Bifurcation Order Postponed Discovery on the Phase Two Issue (Whether or Not Lopez was Paying His Debts as They Come Due) and it is Profoundly Prejudicial to Subject the Petitioning Creditors to the Risk of Adverse Summary Adjudication Before They are Permitted to Complete Their Discovery

Pursuant to Lopez's own motion,[26] on December 19, 2005, this Court granted Lopez's request for an order bifurcating this proceeding as follows: the Court would first determine the

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24 Although Lopez has also provided a declaration by Steven Davis and Jonathan Hayes, they do not support his contention that he has 12 or more creditors in the Section 303 Count. Those declarations go to the question of how many "petitioning creditors" the court should find are qualified to join in the petition. They do not address the question of the number of creditors that are legitimately included in the Section 303 Count.

25 *In re Rogstad,* 126 F.3d 1224, 1227 (9th Cir. 1997) (debtor's declaration "[failed] to satisfy the threshold requirement of Rule 56" because it "contained only a conclusory denial of all wrongdoing").

26 See, Docket Items 27 & 28 (Lopez's Motion for an Order Bifurcating Trial).

number of Lopez's qualifying creditors under 11 U.S.C. §303(b).[27] Only ***after*** that determination has been made, would the parties be permitted to conduct discovery and proceed to trial on the remaining issues, such as whether or not Lopez was paying his debts as they came due as of the petition date.[28] Lopez's Motion acknowledges this Court's bifurcation order but fails to explain why the Motion proceeds to ignore that order by arguing that Lopez was paying his debts as they came due.[29]

Again pursuant to Lopez's own motion, on April 3, 2006, this court granted Lopez's request to prohibit the Petitioning Creditors from conducting discovery regarding any issue other than the number of Lopez's qualifying creditors under 11 U.S.C. §303(b).[30] Specifically, Lopez's motion to limit discovery acknowledged:

> The court previously granted the motion of the debtor to bifurcate the trial as to number of creditors in the first instance and generally paying his debts as they become due in the second instance. The single petitioning creditor was claiming that there were fewer than twelve creditors. The court at that time stated on the record that discovery would be limited to the number of creditors until trial resolved that issue.[31]

This Court agreed with Lopez and limited discovery to evidence pertaining to the number of Lopez's qualifying creditors. Although Stanly vigorously opposed the bifurcation motion,[32] he has accepted the court's ruling with good humor, and absolute fidelity to the resulting bifurcation order.[33] Lopez now wants to convert the shield he won in the bifurcation order into a sword with which to assault the petitioning creditors who were rendered defenseless by their compliance with

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[27] See, Docket Item 35 (Minute Order ordering "Bifurcation granted as to number of creditors").

[28] See the Declaration of L. Scott Keehn filed concurrently herewith ("LSK 6/14/06 Decl.") at ¶ 8.

[29] See, Lopez's Motion, page 7 lines 1-2 ("Lopez filed a Motion to Bifurcate the Trial which was granted at a hearing on December 19, 2005").

[30] See, Docket Item 48;

[31] See, Docket Item 41, page 5 lines 15-20.

[32] See Docket Item 32.

[33] See LSK 6/14/06 Decl at ¶ 9.

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that order. Having embraced the protection the court provided from full scale discovery, Lopez now breaks faith with the court by dishonoring his implied commitment to refrain from putting the "*paying his debts as they come due*" issue before the court until after the Phase One issue had been resolved, and Phase Two discovery conducted.

There can be no serious doubt from this record considered in its entirety that in granting the bifurcation motion, this court also assumed that Lopez would not be bringing any dispositive motion on the Phase Two issue unless both (a) the Phase One issue had been decided adversely against him, and (b) the petitioning creditors were given a reasonable opportunity to conduct follow-up discovery to produce admissible evidence for the Phase Two issue. No right-thinking person could have believed otherwise given the context of the bifurcation motion, the vehemence with which it was opposed, and Lopez's plea for cost-efficacy that ultimately carried the day. The Petitioning creditors' counsel has also relied upon the sequential conduct of the case, as required by the bifurcation motion, by deferring Phase Two discovery until a favorable ruling on Phase One was obtained.[34] Lopez's attempt to garner an unfair strategic advantage from the protections from the order that he sought should shock the conscience of the most calloused observer, and common principles of equitable estoppel cry out to prevent so rank an abuse of the court's protective order.

Based on the Court's bifurcation order, it is improper for Lopez to raise any issues in his Motion beyond the Phase One issue of the number of Lopez's qualifying creditors. Even though FRBP 1013(a) directs a court to determine this issue "*at the earliest practicable time.*" That practicality must be measured in light of the specific procedural context of the case to which it applies. Lopez took himself out of the mainstream of contested involuntary petitions when he asked for and received the remedy of bifurcation. By its nature, bifurcation is likely to prolong the time required to reach ultimate resolution in the event the first of the bifurcated issues is not dispositive of the case. The remedy he requested included the foreseeable risk that the case may be prolonged, rather than expedited, if Lopez could not deliver a *knock-out punch* in Phase One.

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[34] See LSK 6/14/06 Decl at ¶ 9.

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That was a risk he was willing to take when he filed the bifurcation motion. He cannot now be heard to complain of the foreseeable consequences of the risks inherent in a remedy that he not only chose, but insisted upon. As the Ninth Circuit has instructed:

> The earliest practicable time is when there is ***sufficient information*** to resolve the conflict before the court.[35]

The bifurcation order has had the obvious and foreseeable result of preventing the petitioning creditors from conducting the discovery necessary to acquire the "*sufficient information*" which the Ninth Circuit recognizes is the predicate for creating a "*practicable time*" for resolution for the conflict. The significant nature and extent of the minimal discovery that would have been conducted by petitioning creditors but for the bifurcation order, has been set forth in detail in the LSK 6/14/06 Decl. at ¶ 10, which is incorporated herein by this reference in its entirety. There is considerable discovery yet to be had, including, but not limited to the facts leading to the curious decision to exclude Lopez as a borrower (shielding any adverse credit information) when Mrs. Lopez refinanced their residence eight months prior to the petition date. The need to conduct all of the discovery authored in paragraph 10 of the LSK 6/14/06 Decl. at this point, is ample ground for refusing to consider disposing of the Phase Two issue in a manner adverse to the petitioning creditors at this time.[36] Thus, Lopez is not entitled to summary judgment on this issue.[37]

2. Evidence Acquired To Date Establishes that Lopez Was Not Generally Paying His Debts as They Come Due in the June 30, 2005, Time Frame

This Court must enter an order for relief against Lopez if the evidence establishes that, as of the petition date, Lopez was not generally paying his debts as they came due.[38] To make this determination, a court must examine the "*totality of the circumstances*" pertaining to the debtor's

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35 *Matter of Bishop, Baldwin, Rewald, Dillingham & Wong, Inc.*, 779 F.2d 471, 475 (9th Cir. 1985) (emphasis added).

36 See FRCP 56(f).

37 FRCP 56(f); see also, LSK 6/14/06 Decl. at ¶ 10.

38 *Matter of Bishop, Baldwin, Rewald, Dillingham & Wong, Inc.*, supra, 779 F.2d at 474-475.

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financial affairs as of the petition date to determine whether the debtor is: (a) dealing with his creditors in a manner that is "*outside the ordinary course of business*" and/or (b) failing to pay creditors upon demand for payment.[39] The debtor's good faith with respect to his financial obligations is also relevant, and evidence of bad faith in this regard constitutes grounds to issue an order for relief in favor of the petitioning creditors.[40]

Here, Lopez has not presented any evidence of how he had been generally handling his financial affairs as of the petition date other than his own self-serving testimony, consisting entirely of the following conclusory assertions:

> 6. My creditors are almost all consumer type debts which I generally pay each month, generally as the bills are received. The monthly expenses are overwhelmingly consumer related, general household expenses. If they are not generally paid as they become due, they are cancelled by the creditor. Newspapers and utilities and insurance companies do not continue to provide services if the buyer is not generally paying his debts as they become due. I was paying my mortgages and other secured creditors generally as they become due. Bills are occasionally paid beyond the due date, but with very few exceptions, within 30 days of receipt. . . .
> 11. I was generally paying my debts as they became due prior to June 30, 2005.[41]

No further evidence on this issue is provided. Without even basic specifics about, e.g, precisely what "consumer type debts" Lopez is referring to, and what his practice or method was for keeping current on those debts, this Court simply does not have sufficient facts to apply to the requisite "totality of the circumstances" standard in favor of Lopez. Significantly, the totality of available evidence suggests only that Lopez was not generally paying his debts as they came due.[42] That makes Lopez's failure to provide the detailed evidence necessary to support his

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[39] 11 U.S.C. § 303 (h)(1); *Matter of Bishop, Baldwin, Rewald, Dillingham & Wong, Inc.*, supra, 779 F.2d at 475; *In re Focus Media, Inc.* 378 F.3d 916, 928 -929 (9th Cir. 2004).

[40] *Matter of Bishop, Baldwin, Rewald, Dillingham & Wong, Inc.*, supra, 779 F.2d at 475.

[41] Declaration of Francis Lopez, pages 14 and 15 of Lopez's Motion.

[42] See LSK 6/14/06 decl at ¶ 4 and 5, and Exhibits B-N.

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contentions with respect to the Section 303(h) issues, fatal to his bid for summary judgment in his favor.

Beyond Lopez's deficiencies, the documentary and other evidence gathered to date contradicts his assertions, and demonstrates an opposite truth. The following is a summary of a partial picture[43] of Lopez's dire financial state the three month period prior to the petition date:

CREDITOR LISTED IN LOPEZ'S ANSWER	STATEMENT OR INVOICE DATE	NOT BEING PAID WHEN DUE (As of 3 Months Pre-Petition)
BANKCARD SERVICES (Credit Card)	05/10/2005	Past Due Amount: $39.00 "**IMPORTANT NEWS**": "WE WANT TO MAKE SURE YOU ARE AWARE THAT WE HAVE NOT RECEIVED YOUR PAYMENT." LSK 6/14/06 Decl at ¶ 4, Exhibit B.
BANK OF AMERICA (VISA Credit Card)	05/13/2005	Account Notice: "Your account is currently subject to the penalty rate." LSK 6/14/06 Decl at ¶ 4, Exhibit C.
BANK OF AMERICA (VISA Credit Card)	06/13/2005	Past Due Amount: $54.00 Over the Limit Fee: $35.00 LSK 6/14/06 Decl at ¶ 4, Exhibit D.
HOUSEHOLD BANK (Best Buy Credit Card)	05/03/2005	Past Due Amount: $186.00 Late Charge: $35.00 [LOPEZ Depo page 214: "Best Buy belongs to Household Bank. The Household Bank, slash, HSBC was combined with Best Buy in determining that $5,000 balance."] LSK 6/14/06 Decl at ¶ 4, Exhibit E.
HOUSEHOLD BANK (Mastercard Credit Card)	04/13/2005	Past Due Amount: $102.00 Overlimit Amount: $156.19 Late Charge: $35.00 Overlimit Charge: $29.00 LSK 6/14/06 Decl at ¶ 5, Exhibit F.

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43 As stated above, Petitioning Creditors have not yet had an opportunity to complete discovery on this issue.

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CREDITOR LISTED IN LOPEZ'S ANSWER	STATEMENT OR INVOICE DATE	NOT BEING PAID WHEN DUE (As of 3 Months Pre-Petition)
HOUSEHOLD BANK (Mastercard Credit Card)	05/13/2005	Past Due Amount: $156.00 Overlimit Amount: $266.91 Late Charge: $35.00 Overlimit Charge: $29.00 LSK 6/14/06 Decl at ¶ 5, Exhibit G.
HOUSEHOLD BANK (Mastercard Credit Card)	06/13/2005	Past Due Amount: $163.00 Overlimit Amount: $295.95 Late Charge: $35.00 Overlimit Charge: $29.00 LSK 6/14/06 Decl at ¶ 5, Exhibit H.
NORTHWEST FLORIDA DAILY NEWS (Newspaper)	05/17/2005	Receipt for payment indicates part of amount paid was for "past due" amount. LSK 6/14/06 Decl at ¶ 4, Exhibit I.
OKALOOSA GAS (Utilities)	04/20/2005	Late Charge: $14.86 LSK 6/14/06 Decl at ¶ 4, Exhibit J.
OKALOOSA GAS (Utilities)	06/21/2005	Late Charge: $8.27 LSK 6/14/06 Decl at ¶ 4, Exhibit K.
PROGRESSIVE INSURANCE (Auto Insurance)	03/13/2005	Late Fee: $5.00 LSK 6/14/06 Decl at ¶ 4, Exhibit L.
PROGRESSIVE INSURANCE (Auto Insurance)	03/14/2005	Cancellation Notice LSK 6/14/06 Decl at ¶ 4, Exhibit L.
PROGRESSIVE INSURANCE (Auto Insurance)	04/13/2005	Late Fee: $5.00 LSK 6/14/06 Decl at ¶ 4, Exhibit L.
PROGRESSIVE INSURANCE (Auto Insurance)	04/14/2005	Cancellation Notice LSK 6/14/06 Decl at ¶ 4, Exhibit L.
PROGRESSIVE INSURANCE (Auto Insurance)	05/04/2005	FINAL Cancellation Notice LSK 6/14/06 Decl at ¶ 4, Exhibit L.
PROGRESSIVE INSURANCE (Auto Insurance)	06/13/2005	Late Fee: $5.00 LSK 6/14/06 Decl at ¶ 4, Exhibit L.

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CREDITOR LISTED IN LOPEZ'S ANSWER	STATEMENT OR INVOICE DATE	NOT BEING PAID WHEN DUE (As of 3 Months Pre-Petition)
PROGRESSIVE INSURANCE (Auto Insurance)	06/14/2005	Cancellation Notice LSK 6/14/06 Decl at ¶ 4, Exhibit L.
Alan Stanly	N/A	Lopez admits that he was deliberately not paying Stanly's judgment, CSUF 177.
TEXACO/SHELL (Gasoline Credit Card)	05/11/2005	Overlimit Amount: $24.37 LSK 6/14/06 Decl at ¶ 4, Exhibit M.
TEXACO/SHELL (Gasoline Credit Card)	06/11/2005	Overlimit Amount: $50.20 Late Fee: $20.00 LSK 6/14/06 Decl at ¶ 4, Exhibit N.
WISE, WAYNE (Personal Loan)	N/A	Note in default [Note: Lopez was supposed to pay upon refinancing his Florida residence, and he didn't - see official docs from Okaloosa County Recorder (refinancing docs). LSK 6/14/06 Decl at ¶ 6, Exhibit O.]

The available evidence shows how Lopez was continually late and/or in default on at least nine of his bills during the three months preceding the involuntary bankruptcy petition. In addition, he was purposefully but wrongfully withholding payment on Stanly's judgment because he believed it would be reversed on appeal.[44] That rationalization has been rejected as an excuse in the context of an involuntary petition,[45] and it makes Stanly the 10th creditor that we see Lopez was not paying as the debts became due. The only creditors Lopez was paying regularly were Cox Communications (television and Internet), and Cingular Wireless (mobile phone). As more fully detailed in Petitioning Creditors' own Motion for Summary Judgment, the remaining listed creditors are irrelevant for purposes of determining whether or not Lopez was paying his debts as they came due:

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44 CSUF 177.

45 See *In re Chong* 16 B.R. 1, 4 (Bankr, Hawaii 1980).

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CREDITORS LISTED IN LOPEZ'S ANSWER	IRRELEVANT BECAUSE
ALLSTATE FLORIDIAN (Homeowners Insurance)	Non-Creditor (Post-Petition Debt)
AMERICAN EXPRESS (Credit Card)	Non-Creditor (Disclaims Debt)
AMERICAN HOME SHIELD (Insurance)	Non-Creditor (Post-Petition Debt)
COASTAL COMMUNITY INSURANCE (Property Insurance)	Non-Creditor (Post-Petition Debt)
FT. WALTON BEACH MEDICAL CENTER (Emergency Room/Medical Services)	Disputed No regular monthly payments required.
KELLY PLANTATION OWNERS ASSOCIATION (Homeowners Association)	Invoices sent/paid quarterly. Nothing overdue as of Petition Date.
VALLEY FORGE LIFE INSURANCE	Non-Creditor
VERIZON WIRELESS (Mobile Phone)	Disputed

Based on statements in Lopez's own Declaration,[46] it appears that Lopez made regular payments to Cox Communications and Cingular Wireless in order to prevent them from shutting down their services for nonpayment. Lopez only paid his Progressive Auto Insurance bill ***after*** receiving cancellation notices. None of Lopez's credit cards were being paid as the bills became due. This practice of only paying for certain critical services that Lopez knows will cease upon non-payment, suggests a severely distressed debtor who is simply unable to generally keep current on his bills as they come due.

Where a majority of the debtor's bills are overdue, a court will find that the debtor is not generally paying his debts as they come due.[47] Here, given that 10 out of 11 relevant obligations (90.1% of the obligations and 80% of his monthly bills) were overdue during the months preceding the petition, summary judgment in favor of the petitioning creditors is appropriate at

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[46] Lopez Decl, pages 14 and 15 of Lopez's Motion.

[47] *In re Focus Media, Inc.* 378 F.3d at 929.

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this point, even without conducting further discovery.[48] In *In re Focus Media, Inc.*, supra, the Ninth Circuit upheld the bankruptcy court's summary judgment in favor of petitioning creditors on the issue of whether or not the debtor was paying debts as they came due given that approximately 80% of the debtor's bills were overdue.[49]

Here Lopez had ample notice that in the context of his summary judgment motion he would be required to come forward with his evidence on every issue that he put before the court – including his Phase Two issue. Not only did he fail to do that, but in the process evidence that entitles the petitioning creditors to summary judgment on the Phase Two issue has surfaced. The United States Supreme Court has led the way in making it clear that in such cases the court may render summary judgment in favor of the non-moving party *sua sponte.*[50] In this case that is exactly what the court should do with respect to the Phase Two issue.

V. CONCLUSION

When distilled to its essence, all of the foregoing leads inevitably to the conclusion that Lopez has failed miserably and completely in meeting the evidentiary burden necessary to prevail in his motion for summary judgment. The fact that he has requested and obtained the benefits of the bifurcation order estop him from obtaining summary adjudication against the petitioning creditors on the Phase Two issue unless and until they have been given an ample opportunity to complete their discovery. However, this process has had the salutary consequence of bringing to the surface a substantial volume of evidence that demonstrates that Lopez was not generally paying his debts as they came due in the June 30, 2005, time frame. On this record, the court could, and should rule in favor of the petitioning creditors on both the Phase One and Phase Two issues.

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48 *Id.*

49 *Id.*

50 *Celotex Corp. V. Catrett,* 477 U.S. 317, 326 (1986)("district courts are widely acknowledged to possess the power to enter summary judgments *sua sponte*, so long as the losing party was on notice that she had to come forward with all of her evidence"); *Rhodes Inc. v. Morrow,* 937 F.Supp. 1202, 1209 (M.D.N.C. 1996)("Summary Judgment may be granted in favor of a non-movant.").

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For these, and all of the foregoing reasons, all of the requests for relief in the Lopez summary judgment motion should be denied, and the court should actually enter summary judgments on the Phase Two issues in favor of the petitioning creditors.

Dated: June 14, 2006

ROBBINS & KEEHN
A Professional Corporation

By: /s/ L. Scott Keehn
L. Scott Keehn
Leslie F. Keehn
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UNITED STATES BANKRUPTCY COURT

SOUTHERN DISTRICT OF CALIFORNIA

In Re: FRANCIS J. LOPEZ, Alleged Debtor	Case No. 05-05926-PBINV Involuntary Chapter 7 **CREDITORS' SEPARATE STATEMENT OF UNDISPUTED MATERIAL FACTS IN OPPOSITION TO ALLEGED DEBTOR'S MOTION FOR SUMMARY JUDGMENT ["CSUF"]** Date: June 26, 2006 Time: 2:00 p.m. Judge: The Honorable Peter W. Bowie Ctrm: 4

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Petitioning creditors herein respectfully submit this Creditors' Separate Statement of Undisputed Facts in opposition to the " Motion by Alleged Debtor for Summary Judgment etc.".

UNDISPUTED MATERIAL FACTS	SUPPORTING EVIDENCE
CASE FILING AND JURISDICTION	
1. This case was commenced with an involuntary petition on June 30, 2005.	Docket Item 1. See also Docket Item 65 (Lopez "Response to Moving Party Separate Statement, Etc." ["Lopez UF"]) at **Lopez UF 1.**
2. This Court has jurisdiction under the involuntary petition.	28 U.S.C. § 1334(a) and 28 U.S.C. § 157(a) and (b)(1). **Lopez UF 2.**
GENERAL AND BACKGROUND FACTS	
3. Francis and Madeleine Lopez were married in 1991.	Lopez Depo. page 63, lines 4-6. **Lopez UF 3.**
4. Francis and Madeleine Lopez did not enter into a prenuptial agreement prior to their marriage.	Lopez Depo. page 63, lines 7-10. **Lopez UF 4.**
5. Francis and Madeleine Lopez have maintained the same joint checking account with Compass Bank since 2004.	Lopez Depo. page 74, line 11-25; Lopez Depo. Exhibit 5; LSK Decl. ¶ 15, Exhibit N, CB 001-002. *Note: The Lopez Denial in the Lopez UF is claimed to be supported by evidence not part of the record in his Summary Judgment Motion. To the extent that the proffered evidence is part of the Lopez Opposition to the Petitioning Creditors' Motion for Summary Judgment, it will be addressed in their Reply.*
6. According to Lopez's custom and practice, consistently applied, when he places a handwritten notation on a bill, that indicates that the bill has in fact been paid.	Lopez Depo. page 87, line 20 - page 88, line 6. *Note: The Lopez Denial in the Lopez UF is claimed to be supported by evidence not part of the record in his Summary Judgment Motion. To the extent that the proffered evidence is part of the Lopez Opposition to the Petitioning Creditors' Motion for Summary Judgment, it will be addressed in their Reply.*
7. Noveon Systems is a Delaware corporation formed in May or June of 2003.	Lopez Depo. page 50, lines 7-15. **Lopez UF 7.**
8. Lopez first became employed by Noveon Systems in the latter half of July, 2003.	Lopez Depo. page 49, lines 9-12. **Lopez UF 8.**

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9. Lopez was an officer of Noveon Systems from the time of its formation until late 2004 or sometime in mid 2005, at which point he resigned based on advice he received from attorneys.	Lopez Depo. page 52, line 11 - page 53, line 14; LSK Decl. at ¶ 14 (Madeleine's Depo.), page 36, lines 21-24. **Lopez UF 9.**
10. Lopez has served as a director of Noveon Systems from or about the time of its formation, and cannot recall if he has ever resigned that position.	Lopez Depo. page 53, line 12 - page 54, line 3. **Lopez UF 10.**
11. Lopez provides services to Noveon in a sales capacity and customer service liaison for scheduling work and related services.	Lopez Depo. page 54, line 22 - page 55, line 1. **Lopez UF 11.**
12. Current compensation from Noveon Systems consists of a profit sharing plan in which he would receive a percentage of profits.	Lopez Depo. page 55, line 18 - page 56, line 2. **Lopez UF 12.**
13. Lopez received less than $12,500 in license fees from Noveon from January 1 to April 27, 2006.	Lopez Depo. page 58, line 8 - page 59, line 15. **Lopez UF 13.**
14. Lopez has received less than $50,000 dollars in aggregate compensation in all categories from Noveon since its inception through and including April 27, 2006.	Lopez Depo. page 59, lines 17-23. **Lopez UF 14.**
15. As of April 27, 2006, Lopez has received no profit sharing payments from Noveon (ever).	Lopez Depo. page 62, lines 20-23. **Lopez UF 15.**
16. In the early summer of 2005, Lopez became licensed to sell life, health, and health insurance annuities and variable annuities in the State of Florida. He utilized that license in a couple of ventures, but quickly abandoned pursuit of that business activity.	Lopez Depo. page 47, line 21 - page 48, line 20. *Note: The Lopez Denial in the Lopez UF is claimed to be supported by evidence not part of the record in his Summary Judgment Motion. To the extent that the proffered evidence is part of the Lopez Opposition to the Petitioning Creditors' Motion for Summary Judgment, it will be addressed in their Reply.*
17. Francis Lopez's income from all sources in calendar year 2005 was less than $50,000.	Lopez Depo. page 70, line 18 - page 71, line 1. **Lopez UF 17.**
18. Lopez is the author of the document entitled "Francis Lopez Exhibit A List of Creditors."* *Hereinafter sometimes referred to as the "Creditor List" or "List of Creditors."	Lopez Depo. page 25, lines 8-9; Lopez Depo. Exhibit 17. **Lopez UF 18.**

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LOPEZ'S RESIDENCE HAS APPARENT EQUITY OF $405,000.00	
19. Lopez purchased his residence at 310 San Myrtle Trail in the first half of 2003 for the purchase price of $745,000.	Lopez Depo. page 101, line 18 - page 102, line 4. *Note: The Lopez Denial in the Lopez UF is claimed to be supported by evidence not part of the record in his Summary Judgment Motion. To the extent that the proffered evidence is part of the Lopez Opposition to the Petitioning Creditors' Motion for Summary Judgment, it will be addressed in their Reply.*
20. The current amount of the obligations secured by the residence are approximately $750,000.	Lopez Depo. page 108, line 7 - page 109, line 2. *Note: The Lopez Denial in the Lopez UF is claimed to be supported by evidence not part of the record in his Summary Judgment Motion. To the extent that the proffered evidence is part of the Lopez Opposition to the Petitioning Creditors' Motion for Summary Judgment, it will be addressed in their Reply.*
21. The current value of the residence is $1,295,000.00	See LFK Decl. at ¶ 2, Exhibit A. *Note: The Lopez Denial in the Lopez UF is claimed to be supported by evidence not part of the record in his Summary Judgment Motion. To the extent that the proffered evidence is part of the Lopez Opposition to the Petitioning Creditors' Motion for Summary Judgment, it will be addressed in their Reply.*
22. The residence is encumbered by a mortgage to Lehman Brothers Bank in the amount of $750,000.00.	See LFK Decl. at ¶ 4, Exhibit C. **Lopez UF 22.**
23. The residence is encumbered by a Home Equity Credit Line in the amount of $125,000.00, of which at least $65,000 has been drawn.	See Lopez Depo. page 116, line 7 - page 118, line 18; and LFK Decl. at ¶ 3, Exhibit B. **Lopez UF 23.**
24. Lopez is entitled to a minimum homestead exemption in the amount of $75,000.00.	Cal. CCP § 704.730(a)(2). *Note: The Lopez Denial in the Lopez UF is claimed to be supported by evidence not part of the record in his Summary Judgment Motion. To the extent that the proffered evidence is part of the Lopez Opposition to the Petitioning Creditors' Motion for Summary Judgment, it will be addressed in their Reply.*

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25. The net apparent equity in the residence to an estate is $405,000.00.	Judicial Notice [FRE 201(b)(1)]: $1,295,000 - ($750,000 + $65,000 + $75,000) = $405,000. *Note: The Lopez Denial in the Lopez UF is claimed to be supported by evidence not part of the record in his Summary Judgment Motion. To the extent that the proffered evidence is part of the Lopez Opposition to the Petitioning Creditors' Motion for Summary Judgment, it will be addressed in their Reply.*
26. Other than his residence, Lopez has no assets of any significant value (more than $10,000 equity).	Stanly Decl. at ¶ 13. *Note: The Lopez Denial in the Lopez UF is claimed to be supported by evidence not part of the record in his Summary Judgment Motion. To the extent that the proffered evidence is part of the Lopez Opposition to the Petitioning Creditors' Motion for Summary Judgment, it will be addressed in their Reply.*
THE TOTAL FORESEEABLE CLAIMS AGAINST THE LOPEZ ESTATE ARE AT LEAST $2,595,800.00	
27. Stanly holds claims against Lopez that total in excess of $2,435,800.00.	Stanly Decl. at ¶¶ 8-11. *Note: The Lopez Denial in the Lopez UF is claimed to be supported by evidence not part of the record in his Summary Judgment Motion. To the extent that the proffered evidence is part of the Lopez Opposition to the Petitioning Creditors' Motion for Summary Judgment, it will be addressed in their Reply.*
28. Frederick Lopez holds claims against Lopez in the amount of $55,000.	See next section below. *Note: The Lopez Denial in the Lopez UF is claimed to be supported by evidence not part of the record in his Summary Judgment Motion. To the extent that the proffered evidence is part of the Lopez Opposition to the Petitioning Creditors' Motion for Summary Judgment, it will be addressed in their Reply.*
29. Other entities hold claims against Lopez of approximately $105,000.00.	Stanly Decl. at ¶ 12.
LOPEZ OWES HIS FATHER - FREDERICK LOPEZ - $55,000 ($20,000 PRE-PETITION / $35,000 POST-PETITION BORROWING)	
30. As of May 9, 2005, Lopez owed his father – Frederick Lopez – $20,000 on account of money that Lopez had borrowed from him.	Lopez Depo. page 28, lines 17 - page 29, line 5. **Lopez UF 30.**

31. As of June 30, 2005, none of the monies that Lopez had borrowed from his father had been repaid.	Lopez Depo. page 31, lines 12-16. **Lopez UF 31.**
32. Since June 30, 2005, Lopez has borrowed an additional sum of $35,000 from his father.	Lopez Depo. page 30, lines 5-15.
33. Lopez did not include his father as a creditor on Exhibit A to his Answer (Lopez Depo. Exhibit 17) because he understood that it was not appropriate to include relatives on that list.	Lopez Depo., page 27, lines 13-20. **Lopez UF 33.**
LOPEZ'S ATTORNEY WILL HAVE POST-PETITION GAP CLAIMS	
34. To the best of his recollection (as refreshed by his review of available documents), Lopez has not paid his attorney of record in this case anything since February 5, 2006.	Lopez Depo. at page 14, line 14 - page 16, line 15. **Lopez UF 34.**
ALLSTATE FLORIDIAN WAS NOT A CREDITOR ON JUNE 30, 2005, BECAUSE THE PREMIUM DUE FOR THE 7/16/04 THROUGH 7/16/05 PERIOD WAS FULLY PAID ON MARCH 16, 2005	
35. Lopez has produced any and all documents evidencing any and all payments he made to Allstate Floridian (identified as one of his creditors) during the time period of June 30, 2005 through April 27, 2006.	Lopez Depo. page 12, lines 1-8; page 13, lines 8-9; Lopez Depo. Exhibit 1. *Note: The Lopez Denial in the Lopez UF is claimed to be supported by evidence not part of the record in his Summary Judgment Motion. To the extent that the proffered evidence is part of the Lopez Opposition to the Petitioning Creditors' Motion for Summary Judgment, it will be addressed in their Reply.*
36. Lopez claims to have been indebted to Allstate Floridian (insurance company) in the approximate amount of $1,900 as of June 30, 2005.	Lopez Depo. Exhibit 17 at page 1. **Lopez UF 36.**
37. However, as of June 30, 2005, Lopez was not indebted to Allstate Floridian indemnity company in any amount because the premium period then in effect (7/16/04 to 7/16/05), payments for the prior period would have been completed before June 30, 2005, and the obligation to pay for the upcoming period would not begin to accrue until July 17, 2005, with the first payment due in September of that year.	Lopez Depo. page 154, line 25 - page 155, line 20; Lopez Depo. Exhibit 25. *Note: The Lopez Denial in the Lopez UF is claimed to be supported by evidence not part of the record in his Summary Judgment Motion. To the extent that the proffered evidence is part of the Lopez Opposition to the Petitioning Creditors' Motion for Summary Judgment, it will be addressed in their Reply.*

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38. The coverage period for the insurance policy maintained by Lopez through Allstate Floridian Indemnity Company ran from 7/16/04 to 7/16/05.	LSK Decl. ¶ 4, Exhibit C, Allstate 010. *Note: The Lopez Denial in the Lopez UF is claimed to be supported by evidence not part of the record in his Summary Judgment Motion. To the extent that the proffered evidence is part of the Lopez Opposition to the Petitioning Creditors' Motion for Summary Judgment, it will be addressed in their Reply.*
39. The final installment for the premium for that period became due on November 21, 2004.	LSK Decl. ¶ 4, Exhibit C, Allstate 010. *Note: The Lopez Denial in the Lopez UF is claimed to be supported by evidence not part of the record in his Summary Judgment Motion. To the extent that the proffered evidence is part of the Lopez Opposition to the Petitioning Creditors' Motion for Summary Judgment, it will be addressed in their Reply.*
40. The final installment was not timely paid, the policy was cancelled for nonpayment of the premium on March 1, 2005 (Allstate 014), and subsequently paid, and reinstated without a lapse of coverage on March 16, 2005 (Allstate 018).	LSK Decl. ¶ 4, Exhibit C, Allstate 010, 014 and 018. *Note: The Lopez Denial in the Lopez UF is claimed to be supported by evidence not part of the record in his Summary Judgment Motion. To the extent that the proffered evidence is part of the Lopez Opposition to the Petitioning Creditors' Motion for Summary Judgment, it will be addressed in their Reply.*
AMERICAN EXPRESS WAS NOT A CREDITOR ON JUNE 30, 2005	
41. Lopez has produced any and all documents evidencing any and all payments he made to American Express (identified as one of his creditors) during the time period of June 30, 2005 through April 27, 2006.	Lopez Depo. page 12, lines 1-8; page 14, lines 10-11; Lopez Depo. Exhibit 1. *Note: The Lopez Denial in the Lopez UF is claimed to be supported by evidence not part of the record in his Summary Judgment Motion. To the extent that the proffered evidence is part of the Lopez Opposition to the Petitioning Creditors' Motion for Summary Judgment, it will be addressed in their Reply.*
42. Lopez asserts that he has an account with American Express (3783949802283007) upon which he owed $22,000 as of June 30, 2005.	Lopez Depo. Exhibit 17 (creditor list) at page 17-3. **Lopez UF 42.**
43. However, American Express indicates that there was no amount due and owing from Lopez on June 30, 2005.	LSK Decl. ¶ 5, Exhibit D; Lopez Depo. page 155, line 21 - page 160, line 9.

107354/LSK/5311.01

AMERICAN HOME SHIELD WAS NOT A CREDITOR ON JUNE 30, 2005	
44. Lopez asserts that he was indebted to American Home Shield in the amount of $128.00 on June 30, 2005.	Lopez Depo. Exhibit 17 at page 3. **Lopez UF 44.**
45. Lopez has produced any and all documents evidencing any and all payments he made to American Home Shield (identified as one of his creditors) during the time period of June 30, 2005 through April 27, 2006.	Lopez Depo. page 12, lines 1-8; page 14, lines 4-5; Lopez Depo. Exhibit 1. *Note: The Lopez Denial in the Lopez UF is claimed to be supported by evidence not part of the record in his Summary Judgment Motion. To the extent that the proffered evidence is part of the Lopez Opposition to the Petitioning Creditors' Motion for Summary Judgment, it will be addressed in their Reply.*
46. The Lopez contract with American Home Shield that was in place on the Petition Date (06/30/05) began on July 16, 2004 and did not expire until July 16, 2005.	American Home Shield - "Contract Home Page" - ASH 0002 (LSK Decl. ¶ 6, Exhibit E). **Lopez UF 46.**
BANK OF AMERICA RECEIVED BOTH PRE-PETITION PREFERENCE PAYMENTS AND VOIDABLE POST-PETITION PAYMENTS	
47. Lopez asserts that as of June 30, 2005, he was indebted to Bank of America in the approximate amount of $2,386.	Lopez Depo. Exhibit 17 at page 2. **Lopez UF 47.**
48. Lopez has produced any and all documents evidencing any and all payments he made to Bank of America (identified as one of his creditors) during the time period of June 30, 2005 through April 27, 2006.	Lopez Depo. page 12, lines 1-8; page 13, lines 12-13; Lopez Depo. Exhibit 1. *Note: The Lopez Denial in the Lopez UF is claimed to be supported by evidence not part of the record in his Summary Judgment Motion. To the extent that the proffered evidence is part of the Lopez Opposition to the Petitioning Creditors' Motion for Summary Judgment, it will be addressed in their Reply.*
49. On May 6, 2005, Lopez transferred $50.00 on account of the Bank of America obligation.	LSK Decl., ¶ 7, Exhibit F, page 1. *Note: The Lopez Denial in the Lopez UF is claimed to be supported by evidence not part of the record in his Summary Judgment Motion. To the extent that the proffered evidence is part of the Lopez Opposition to the Petitioning Creditors' Motion for Summary Judgment, it will be addressed in their Reply.*
50. On or about May 17, 2005, Lopez caused $50.00 to be paid to Bank of America on account of the pre-petition obligation.	Lopez Depo. page 172, line 25 - page 173, line 23. **Lopez UF 50.**

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51. On June 22, 2005, Lopez paid Bank of America $54.00 dollars on account of the debt he owed to them as identified on his "list of creditors."	Lopez Depo. page 83, lines 1-15; Lopez Depo. Exhibit 7, page 1 (check no.1617, $54.00). **Lopez UF 51.**
52. On June 26, 2005, Lopez transferred $54.00 to Bank of America on account of this debt.	LSK Decl. ¶ 7, Exhibit F, page 2. *Note: The Lopez Denial in the Lopez UF is claimed to be supported by evidence not part of the record in his Summary Judgment Motion. To the extent that the proffered evidence is part of the Lopez Opposition to the Petitioning Creditors' Motion for Summary Judgment, it will be addressed in their Reply.*
53. On June 28, 2005, Lopez transferred $54.00 to Bank of America on account of his pre-petition debt.	LSK Decl. ¶ 15, Exhibit N, CB 0185. *Note: The Lopez Denial in the Lopez UF is claimed to be supported by evidence not part of the record in his Summary Judgment Motion. To the extent that the proffered evidence is part of the Lopez Opposition to the Petitioning Creditors' Motion for Summary Judgment, it will be addressed in their Reply.*
54. On June 28, 2005, Bank of America received a payment of $54.00 on account of the obligation reflected in the "list of creditors."	Lopez Depo. page 83, line 19 - page 85, line 6; Lopez Depo. Exhibit 7, page 1 (check no. 1617). **Lopez UF 54.**
55. At some point in the month of June, but before June 30, 2005, Lopez made a payment of $54.00 on account of that obligation.	Lopez Depo. page 171, lines 1-17; page 171, line 22 - page 172, line 12; Lopez Depo. Exhibit 27. **Lopez UF 55.**
56. On August 11, 2005, Lopez transferred $292.50 to Bank of America on account of this pre-petition obligation.	LSK Decl. ¶ 7, Exhibit F, page 3. *Note: The Lopez Denial in the Lopez UF is claimed to be supported by evidence not part of the record in his Summary Judgment Motion. To the extent that the proffered evidence is part of the Lopez Opposition to the Petitioning Creditors' Motion for Summary Judgment, it will be addressed in their Reply.*
BANK CARD SERVICES RECEIVED PRE-PETITION PREFERENCE PAYMENTS AND ITS ACCOUNT WAS SUBJECT TO A BONA FIDE DISPUTE	
57. Lopez was indebted to Bank Card Services in some amount as of June 30, 2005.	Lopez Depo. Exhibit 17 at page 2. **Lopez UF 57.**

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58. Lopez has produced any and all documents evidencing any and all payments he made to Bank Card Services (identified as one of his creditors) during the time period of June 30, 2005 through April 27, 2006.	Lopez Depo. page 12, lines 1-8; page 13, lines 21-22; Lopez Depo. Exhibit 1. *Note: The Lopez Denial in the Lopez UF is claimed to be supported by evidence not part of the record in his Summary Judgment Motion. To the extent that the proffered evidence is part of the Lopez Opposition to the Petitioning Creditors' Motion for Summary Judgment, it will be addressed in their Reply.*
59. Bank Card Services received payment on account during the period of April 1 through June 30, 2005.	Lopez Depo. page 175, lines 13-18. **Lopez UF 59.**
60. However, Lopez has a bonafide dispute over this creditor's unilateral position of late charges on the account because the account mechanism required an automatic deduction for at least the minimum amount due on the account. This account is subject to a bonafide dispute.	Lopez Depo. page 175, line 18 - page 177, line 10. *Note: The Lopez Denial in the Lopez UF is claimed to be supported by evidence not part of the record in his Summary Judgment Motion. To the extent that the proffered evidence is part of the Lopez Opposition to the Petitioning Creditors' Motion for Summary Judgment, it will be addressed in their Reply.*
CINGULAR RECEIVED EITHER A PRE-PETITION PREFERENCE PAYMENT OR A VOIDABLE POST-PETITION TRANSFER	
61. Lopez has produced any and all documents evidencing any and all payments he made to Cingular Wireless (identified as one of his creditors) during the time period of June 30, 2005 through April 27, 2006.	Lopez Depo. page 12, lines 1-8; page 13, lines 23-24; Lopez Depo. Exhibit 1. *Note: The Lopez Denial in the Lopez UF is claimed to be supported by evidence not part of the record in his Summary Judgment Motion. To the extent that the proffered evidence is part of the Lopez Opposition to the Petitioning Creditors' Motion for Summary Judgment, it will be addressed in their Reply.*
62. On June 19, 2005, Lopez owed Cingular $313.40.	Lopez Depo. page 91, lines 3-11; Lopez Depo. Exhibit 18. **Lopez UF 62.**
63. As of June 19, 2005, Lopez was past due in obligations owed to Cingular in the amount of $151.81.	Lopez Depo. page 91, lines 3-11; Lopez Depo. Exhibit 18; Lopez Depo. Exhibit 9 at page 4. **Lopez UF 63.**
64. At some time between June 19, 2005, and January 10, 2006, the obligation owed to Cingular as of June 19, 2005, was paid in full.	Lopez Depo. page 91, lines 3-20; page 99, line 14 - page 100, line 19; Lopez Depo. Exhibit 9 at page 3. **Lopez UF 64.**

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CITICARD RECEIVED PRE-PETITION PREFERENCE PAYMENTS	
65. Lopez has produced any and all documents evidencing any and all payments he made to Citi Cards (identified as one of his creditors) during the time period of June 30, 2005 through April 27, 2006.	Lopez Depo. page 12, lines 1-8; page 14, lines 6-7; Lopez Depo. Exhibit 1. *Note: The Lopez Denial in the Lopez UF is claimed to be supported by evidence not part of the record in his Summary Judgment Motion. To the extent that the proffered evidence is part of the Lopez Opposition to the Petitioning Creditors' Motion for Summary Judgment, it will be addressed in their Reply.*
66. On April 18, 2005, Lopez transferred $379.00 to Citicard on account of the pre-petition obligation.	LSK Decl. ¶ 8, Exhibit G, page 2; and Lopez Depo. page 180, lines 7-14; page 181, lines 3-12. *Note: The Lopez Denial in the Lopez UF is claimed to be supported by evidence not part of the record in his Summary Judgment Motion. To the extent that the proffered evidence is part of the Lopez Opposition to the Petitioning Creditors' Motion for Summary Judgment, it will be addressed in their Reply.*
67. On April 19, 2005, Lopez transferred $379.00 to Citibank.	LSK Decl. ¶ 15, Exhibit N, CB 0172; and Lopez Depo. page 180, lines 7-14; page 181, lines 3-12. *Note: The Lopez Denial in the Lopez UF is claimed to be supported by evidence not part of the record in his Summary Judgment Motion. To the extent that the proffered evidence is part of the Lopez Opposition to the Petitioning Creditors' Motion for Summary Judgment, it will be addressed in their Reply.*
68. On May 18, 2005, Lopez transferred $379.00 to Citicard on account of the pre-petition obligation.	LSK Decl. ¶ 8, Exhibit G, page 3; and Lopez Depo. page 180, lines 7-14; page 181, lines 3-12. *Note: The Lopez Denial in the Lopez UF is claimed to be supported by evidence not part of the record in his Summary Judgment Motion. To the extent that the proffered evidence is part of the Lopez Opposition to the Petitioning Creditors' Motion for Summary Judgment, it will be addressed in their Reply.*
69. On May 19, 2005, Lopez transferred $379.00 to Citibank on account of his pre-petition debt.	LSK Decl. ¶ 15, Exhibit N, CB 0181; and Lopez Depo. page 180, lines 7-14; page 181, lines 3-12.*Note: The Lopez Denial in the Lopez UF is claimed to be supported by evidence not part of the record in his Summary Judgment Motion. To the extent that the proffered evidence is part of the Lopez Opposition to the Petitioning Creditors' Motion for Summary Judgment, it will be addressed in their Reply.*

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70. On June 18, 2005, Lopez transferred $379.00 to Citicard on account of the pre-petition obligation.	LSK Decl. ¶ 8, Exhibit G, page 4; and Lopez Depo. page 179, lines 8-23; Lopez Depo. Exhibit 29. *Note: The Lopez Denial in the Lopez UF is claimed to be supported by evidence not part of the record in his Summary Judgment Motion. To the extent that the proffered evidence is part of the Lopez Opposition to the Petitioning Creditors' Motion for Summary Judgment, it will be addressed in their Reply.*
71. On June 20, 2005, Lopez transferred $379.00 to Citibank.	LSK Decl. ¶ 15, Exhibit N, CB 0184. *Note: The Lopez Denial in the Lopez UF is claimed to be supported by evidence not part of the record in his Summary Judgment Motion. To the extent that the proffered evidence is part of the Lopez Opposition to the Petitioning Creditors' Motion for Summary Judgment, it will be addressed in their Reply.*
72. On June 30, 2005, Lopez was indebted to Citi Card/AA Advantage Card in the amount of $32,136.57.	Lopez Depo. page 178, line 23 - page 179, line 23. **Lopez UF 72.**
COASTAL COMMUNITY INSURANCE WAS NOT A CREDITOR ON JUNE 30, 2005	
73. The creditor identified as Coastal Community Insurance is the insurance company that provides flood insurance for the Lopez residence.	Lopez Depo. page 119, line 4-9. **Lopez UF 73.**
74. Lopez has produced any and all documents evidencing any and all payments he made to Coastal Community Insurance (identified as one of his creditors) during the time period of June 30, 2005 through April 27, 2006.	Lopez Depo. page 12, lines 1-8; page 12, line 25 - page 13 line 1; Lopez Depo. Exhibit 1. *Note: The Lopez Denial in the Lopez UF is claimed to be supported by evidence not part of the record in his Summary Judgment Motion. To the extent that the proffered evidence is part of the Lopez Opposition to the Petitioning Creditors' Motion for Summary Judgment, it will be addressed in their Reply.*
75. An insurance policy was issued by Coastal Community Insurance for 7/30/04-7/30/05.	LSK Decl. ¶ 9, Exhibit H. **Lopez UF 75.**
76. By August 9, 2004, that premium had been paid in full.	LSK Decl. ¶ 9, Exhibit H, pages 2-4.

77. The premiums for the flood insurance policy provided by Coastal Community Insurance are paid by Lopez's lender from an escrow account, and are not paid by Francis or Madeleine Lopez.	Lopez Depo. page 119, line 4 - page 120, line 6. **Lopez UF 77.**
78. As of June 30, 2005, Lopez was not indebted to Coastal Community Insurance because the insurance for the period beginning July 30, 2004 and ending July 30, 2005, had been paid, and the next coverage period – July 30, 2005 through July 30, 2006 – was not due, owing, or accrued.	Lopez Depo. page 120, lines 7-11; Lopez Depo. Exhibit 10; Lopez Depo. page 121, line 9 - page 125, line 13.
COX COMMUNICATIONS RECEIVED A VOIDABLE POST-PETITION TRANSFER	
79. As of June 30, 2005, Lopez was indebted to Cox Communications in the amount of $112.	Lopez Depo. Exhibit 17, page 2; Lopez Depo. page 135, line 10 - page 136, line 13; Lopez Depo. Exhibit 21. **Lopez UF 79.**
80. Lopez has produced any and all documents evidencing any and all payments he made to Cox Communications (identified as one of his creditors) during the time period of June 30, 2005 through April 27, 2006.	Lopez Depo. page 12, lines 1-8; page 13, lines 16-17; Lopez Depo. Exhibit 1. *Note: The Lopez Denial in the Lopez UF is claimed to be supported by evidence not part of the record in his Summary Judgment Motion. To the extent that the proffered evidence is part of the Lopez Opposition to the Petitioning Creditors' Motion for Summary Judgment, it will be addressed in their Reply.*
81. At some point after June 30, 2005, the entire amount of the pre-petition obligation owed to Cox Communication was paid in full by Lopez.	Lopez Depo. page 136, lines 16-20; see also page 134, line 23 - page 135, line 3; page 133, line 4-18; Lopez Depo. Exhibit 5, page 4, column 3, row 2 (check no. 1558). *Note: The Lopez Denial in the Lopez UF is claimed to be supported by evidence not part of the record in his Summary Judgment Motion. To the extent that the proffered evidence is part of the Lopez Opposition to the Petitioning Creditors' Motion for Summary Judgment, it will be addressed in their Reply.*

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THE CLAIM OF FT. WALTON BEACH MEDICAL CENTER IS THE SUBJECT OF A BONA FIDE DISPUTE	
82. Lopez has produced any and all documents evidencing any and all payments he made to Fort Walton Beach Medical Center (identified as one of his creditors) during the time period of June 30, 2005 through April 27, 2006.	Lopez Depo. page 12, lines 1-8; page 14, lines 12-13; Lopez Depo. Exhibit 1. *Note: The Lopez Denial in the Lopez UF is claimed to be supported by evidence not part of the record in his Summary Judgment Motion. To the extent that the proffered evidence is part of the Lopez Opposition to the Petitioning Creditors' Motion for Summary Judgment, it will be addressed in their Reply.*
83. On June 30, 2005, Lopez was indebted to the Fort Walton Beach Medical Center in the approximate amount of $1,600 dollars.	Lopez Depo. Exhibit 17 at page 4. **Lopez UF 83.**
84. However, this obligation is the subject of a bonafide dispute as to Lopez's liability. The dispute arises from the fact that the admitting doctor – and an agent of the creditor – affirmatively represented to Lopez that the treatments being made would be covered by his insurance, when in fact they were not. Lopez's nonpayment of the bill arises from this dispute.	Lopez Depo. page 182, line 5 - page 185, line 4. *Note: The Lopez Denial in the Lopez UF is claimed to be supported by evidence not part of the record in his Summary Judgment Motion. To the extent that the proffered evidence is part of the Lopez Opposition to the Petitioning Creditors' Motion for Summary Judgment, it will be addressed in their Reply.*
HOUSEHOLD BANK RECEIVED PRE-PETITION PREFERENCE PAYMENTS	
85. On June 30, 2006, Lopez was indebted to Household Bank/ HSBC in the approximate amount of $5,000.	Lopez Depo. Exhibit 17 at page 3. **Lopez UF 85.**
86. Lopez has produced any and all documents evidencing any and all payments he made to Household Bank/HSBC (identified as one of his creditors) during the time period of June 30, 2005 through April 27, 2006.	Lopez Depo. page 12, lines 1-8; page 14, lines 8-9; Lopez Depo. Exhibit 1. *Note: The Lopez Denial in the Lopez UF is claimed to be supported by evidence not part of the record in his Summary Judgment Motion. To the extent that the proffered evidence is part of the Lopez Opposition to the Petitioning Creditors' Motion for Summary Judgment, it will be addressed in their Reply.*
87. On or about May 16, 2005, Lopez made a payment on account of the Household Bank obligation in the amount of $50.	Lopez Depo. page 185, lines 5-19; Lopez Depo. Exhibit 31. **Lopez UF 87.**

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88. On May 17, 2005, Lopez transferred $100.00 to Household Bank on of his antecedent debt.	LSK Decl. ¶ 10, Exhibit I, page 7. *Note: The Lopez Denial in the Lopez UF is claimed to be supported by evidence not part of the record in his Summary Judgment Motion. To the extent that the proffered evidence is part of the Lopez Opposition to the Petitioning Creditors' Motion for Summary Judgment, it will be addressed in their Reply.*
89. The May 17, 2005 payment to Household Bank was $223.91 less than the minimum payment due in that cycle.	LSK Decl. ¶ 10, Exhibit I, page 6. *Note: The Lopez Denial in the Lopez UF is claimed to be supported by evidence not part of the record in his Summary Judgment Motion. To the extent that the proffered evidence is part of the Lopez Opposition to the Petitioning Creditors' Motion for Summary Judgment, it will be addressed in their Reply.*
90. Other payments were also made to Household Bank on account of the pre-petition obligation in the months of April and June, 2005.	Lopez Depo. page 185, line 20 - page 186, line 4. **Lopez UF 90.**
KELLY PLANTATION OWNERS ASSOCIATION RECEIVED A VOIDABLE POST-PETITION TRANSFER	
91. Lopez has produced any and all documents evidencing any and all payments he made to Kelly Plantation Owners Association (identified as one of his creditors) during the time period of June 30, 2005 through April 27, 2006.	Lopez Depo. page 12, lines 1-8; Lopez Depo. Exhibit 1. **Lopez UF 91.**
92. On June 30, 2005, Lopez was indebted to the Kelly Plantation Homeowners Association in the amount of $550 on account of home owner association dues.	Lopez Depo.. Exhibit 17, page 17-1; LSK Decl. ¶ 11, Exhibit J, pages 6-7. **Lopez UF 92.**
93. These association bills are generated quarterly, and Lopez has no control over the assessments made.	Lopez Depo. page 188, lines 1-22; page 189, lines 12-20. **Lopez UF 93.**
94. The obligation owed to Kelly Plantation Homeowners Association on June 30, 2005, has subsequently been paid by Lopez.	Lopez Depo. page 190, lines 2-22; Lopez Depo. Exhibit 32. *Note: The Lopez Denial in the Lopez UF is claimed to be supported by evidence not part of the record in his Summary Judgment Motion. To the extent that the proffered evidence is part of the Lopez Opposition to the Petitioning Creditors' Motion for Summary Judgment, it will be addressed in their Reply.*

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95. At some point in time after June 30, 2005, but before December 12, 2005, that obligation had been paid in full.	LSK Decl. ¶ 11, Exhibit J, pages 5 & 7. **Lopez UF 95.**
NORTHWEST FLORIDA DAILY NEWS WAS A CREDITOR ON JUNE 30, 2005, BECAUSE ITS SUBSCRIPTION HAD BEEN PRE-PAID [IT ALSO RECEIVED PRE-PETITION TRANSFERS]	
96. Lopez has produced any and all documents evidencing any and all payments he made to Northwest Florida Daily News (identified as one of his creditors) during the time period of June 30, 2005 through April 27, 2006.	Lopez Depo. page 12, lines 1-8; page 13, lines 6-7; Lopez Depo. Exhibit 1. *Note: The Lopez Denial in the Lopez UF is claimed to be supported by evidence not part of the record in his Summary Judgment Motion. To the extent that the proffered evidence is part of the Lopez Opposition to the Petitioning Creditors' Motion for Summary Judgment, it will be addressed in their Reply.*
97. On May 17, 2005, Lopez paid the Northwest Florida Daily News the sum of $97.39. The payment included past due amounts plus an advance payment for the next three months.	Lopez Depo. page 85, line 21 to page 86 line 6; page 90 line 17-22; Lopez Depo. Exhibit 8 at page 4. **Lopez UF 97.**
98. Of the $97.39 payment to the Northwest Florida Daily News made May 17, 2005, approximately $55.39 was made on account of the past due obligation, and the remaining $42.00 was an advance payment for the next three months.	Lopez Depo. page 85, line 21 to page 86 line 6; page 90 line 17-22; and Exhibit 8, page 1 ("subscription options" in the upper right hand corner) [i.e. subscription rate for 16 weeks (~3 months) equals $42.00]. **Lopez UF 98.**
99. When completing his list of creditors, (Lopez Depo. exhibit 17) Lopez was only estimating an amount due to the Northwest Florida Daily News.	Lopez Depo. page 191, line 13 - page 192, line 8. *Note: The Lopez Denial in the Lopez UF is claimed to be supported by evidence not part of the record in his Summary Judgment Motion. To the extent that the proffered evidence is part of the Lopez Opposition to the Petitioning Creditors' Motion for Summary Judgment, it will be addressed in their Reply.*
100. If any amount was in fact owed to Northwest Florida Daily News, it was paid in full post-petition.	Lopez Depo. page 192, lines 9-15. **Lopez UF 100.**

OKALOOSA GAS DISTRICT RECEIVED BOTH PRE-PETITION PREFERENCES AND VOIDABLE POST-PETITION TRANSFERS	
101. Lopez has produced any and all documents evidencing any and all payments he made to Okaloosa Gas District (identified as one of his creditors) during the time period of June 30, 2005 through April 27, 2006.	Lopez Depo. page 12, lines 1-8; page 13, lines 4-5; Lopez Depo. Exhibit 1. *Note: The Lopez Denial in the Lopez UF is claimed to be supported by evidence not part of the record in his Summary Judgment Motion. To the extent that the proffered evidence is part of the Lopez Opposition to the Petitioning Creditors' Motion for Summary Judgment, it will be addressed in their Reply.*
102. On May 3, 2005, Lopez transferred $171.70 to Okaloosa Gas District.	LSK Decl. ¶ 15, Exhibit N, CB 0173. *Note: The Lopez Denial in the Lopez UF is claimed to be supported by evidence not part of the record in his Summary Judgment Motion. To the extent that the proffered evidence is part of the Lopez Opposition to the Petitioning Creditors' Motion for Summary Judgment, it will be addressed in their Reply.*
103. As of May 19, 2005, Lopez was indebted to the Okaloosa Gas District in the amount of $82.74 (the "5/19/05 obligation").	Lopez Depo. Exhibit 22 at page 1. **Lopez UF 103.**
104. On June 15, 2005, Lopez paid the sum of $82.74 on account of the 5/19/05 obligation; however the payment was untimely made and a late charge in the amount of $8.27 was imposed.	Lopez Depo. Exhibit 22 at page 2. *Note: The Lopez Denial in the Lopez UF is claimed to be supported by evidence not part of the record in his Summary Judgment Motion. To the extent that the proffered evidence is part of the Lopez Opposition to the Petitioning Creditors' Motion for Summary Judgment, it will be addressed in their Reply.*
105. As of June 30, 2005, Lopez was indebted to the Okaloosa Gas District in the amount of $44.33.	Lopez Depo. Exhibit 17, page 1; LSK Decl. ¶ 12, Exhibit K, page 3; and Lopez Depo. Exhibit 17 at page 1; Lopez Depo. Exhibit 22 at page 2; Lopez Depo. Exhibit 12 at page 5. **Lopez UF 105.**
106. On July 20, 2005, Lopez paid Okaloosa Gas District $44.33 on account of the pre-petition obligation.	LSK Decl. ¶ 12, Exhibit K, page 3. *Note: The Lopez Denial in the Lopez UF is claimed to be supported by evidence not part of the record in his Summary Judgment Motion. To the extent that the proffered evidence is part of the Lopez Opposition to the Petitioning Creditors' Motion for Summary Judgment, it will be addressed in their Reply.*

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107. On July 20, 2005, the pre-petition obligation to Okaloosa Gas District was paid in full, however the payment was untimely and a late charge of $3.61 was imposed.	Lopez Depo. page 138, line 8 - page 139, line 4; Lopez Depo. Exhibit 12 at page 4. **Lopez UF 107.**
108. On August 3, 2005, Lopez transferred $34.10 to the Okaloosa Gas District.	LSK Decl. ¶ 15, Exhibit N, CB 0192. *Note: The Lopez Denial in the Lopez UF is claimed to be supported by evidence not part of the record in his Summary Judgment Motion. To the extent that the proffered evidence is part of the Lopez Opposition to the Petitioning Creditors' Motion for Summary Judgment, it will be addressed in their Reply.*
109. On September 29, 2005, Lopez transferred $46.38 to Okaloosa Gas District.	LSK Decl. ¶ 15, Exhibit N, CB 0204; and Lopez Depo. page 83, line 19 - page 85, line 6; Lopez Depo. Exhibit 6, page 3 (check no. 1682). *Note: The Lopez Denial in the Lopez UF is claimed to be supported by evidence not part of the record in his Summary Judgment Motion. To the extent that the proffered evidence is part of the Lopez Opposition to the Petitioning Creditors' Motion for Summary Judgment, it will be addressed in their Reply.*
110. On November 3, 2005, the Okaloosa Gas District received a payment in the amount of $37.32 from Lopez on account of obligations identified in the "list of creditors."	Lopez Depo. page 83, line 1 - page 85, line 6; Lopez Depo. Exhibit 7, page 3 (check no. 1689). *Note: The Lopez Denial in the Lopez UF is claimed to be supported by evidence not part of the record in his Summary Judgment Motion. To the extent that the proffered evidence is part of the Lopez Opposition to the Petitioning Creditors' Motion for Summary Judgment, it will be addressed in their Reply.*
111. Lopez generally pays the Okaloosa Gas District bills from the Compass Bank checking account.	Lopez Depo. page 139, line 17 - page 140, line 12. **Lopez UF 111.**
PROGRESSIVE INSURANCE WAS NOT A CREDITOR ON JUNE 30, 2005	
112. As of June 30, 2005, Lopez claims to have been indebted to Progressive Insurance Company in the amount of $157.20.	Lopez Depo. page 140, lines 18-21; Lopez Depo. Exhibit 17 at page 1. **Lopez UF 112.**

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113. Lopez has produced any and all documents evidencing any and all payments he made to Progressive Insurance (identified as one of his creditors) during the time period of June 30, 2005 through April 27, 2006.	LSK Decl. ¶¶ 2-3, Exhibits A-B (hereinafter "Lopez Depo.") page 12, lines 1-8, 20-24; Lopez Depo. Exhibit 1. *Note: The Lopez Denial in the Lopez UF is claimed to be supported by evidence not part of the record in his Summary Judgment Motion. To the extent that the proffered evidence is part of the Lopez Opposition to the Petitioning Creditors' Motion for Summary Judgment, it will be addressed in their Reply.*
114. However, as of June 30, 2005, no amount was actually due to Progressive, because the existing policy was in effect at that time and was not up for renewal until August 8, 2005.	Lopez Depo. Exhibit 13 at page 3. *Note: The Lopez Denial in the Lopez UF is claimed to be supported by evidence not part of the record in his Summary Judgment Motion. To the extent that the proffered evidence is part of the Lopez Opposition to the Petitioning Creditors' Motion for Summary Judgment, it will be addressed in their Reply.*
115. However, had any amount been due and owing to Progressive on June 30, 2005, it was subsequently paid by Lopez.	Lopez Depo. page 142, lines 18-24. **Lopez UF 115.**
CITIBANK — ON THE QUICKEN PLATINUM CARD — RECEIVED BOTH PRE-PETITION PREFERENCES AND VOIDABLE POST-PETITION TRANSFERS	
116. Lopez has produced any and all documents evidencing any and all payments he made to Quicken Platinum Card (identified as one of his creditors) during the time period of June 30, 2005 through April 27, 2006.	Lopez Depo. page 12, lines 1-8; page 13, lines 1-2; Lopez Depo. Exhibit 1. *Note: The Lopez Denial in the Lopez UF is claimed to be supported by evidence not part of the record in his Summary Judgment Motion. To the extent that the proffered evidence is part of the Lopez Opposition to the Petitioning Creditors' Motion for Summary Judgment, it will be addressed in their Reply.*
117. On May 2, 2005, Lopez transferred $32.09 to Quicken Platinum Card on account of the pre-petition obligation.	LSK Decl. ¶ 8, Exhibit G, page 5. *Note: The Lopez Denial in the Lopez UF is claimed to be supported by evidence not part of the record in his Summary Judgment Motion. To the extent that the proffered evidence is part of the Lopez Opposition to the Petitioning Creditors' Motion for Summary Judgment, it will be addressed in their Reply.*

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118. On June 27, 2005, Lopez transferred $18.00 to Quicken Platinum Card on account of the pre-petition obligation.	LSK Decl. ¶ 8, Exhibit G, page 7. *Note: The Lopez Denial in the Lopez UF is claimed to be supported by evidence not part of the record in his Summary Judgment Motion. To the extent that the proffered evidence is part of the Lopez Opposition to the Petitioning Creditors' Motion for Summary Judgment, it will be addressed in their Reply.*
119. As of June 30, 2005, Lopez was indebted to Quicken Platinum Select in the approximate amount of $848. At some point between May 24, 2005, and June 23, 2005, Lopez paid $18 on the Quicken Platinum Select card obligation.	Lopez Depo. page 194, line 17 - page 195, line 2; Lopez Depo. Exhibit 33 at page 2. **Lopez UF 119.**
120. On August 1, 2005, Lopez transferred $40.00 to Quicken Platinum Card on account of the pre-petition obligation.	LSK Decl. ¶ 8, Exhibit G, page 8. *Note: The Lopez Denial in the Lopez UF is claimed to be supported by evidence not part of the record in his Summary Judgment Motion. To the extent that the proffered evidence is part of the Lopez Opposition to the Petitioning Creditors' Motion for Summary Judgment, it will be addressed in their Reply.*
STANLY IS AN INSIDER BECAUSE BOTH HE AND LOPEZ OWN 50% OF PRISM ADVANCE TECHNOLOGIES INC. ("PRISM")	
121. Lopez is a 50% shareholder of Prism.	See ¶ 1 of the Declaration of Francis Lopez in Opposition to Motion for Relief from Stay, Southern District of California U.S. Bankruptcy Court Case No. 03-07777-INV7, Docket Item 45. **Lopez UF 121.**
122. Alan Stanly is a 50% shareholder, officer and director of Prism.	Stanly Decl. at ¶ 2. **Lopez UF 122.**
TEXACO RECEIVED BOTH PRE-PETITION PREFERENCES AND VOIDABLE POST-PETITION TRANSFERS	
123. Lopez has produced any and all documents evidencing any and all payments he made to Texaco/Shell (identified as one of his creditors) during the time period of June 30, 2005 through April 27, 2006.	Lopez Depo. page 12, lines 1-8; page 13, lines 10-11; Lopez Depo. Exhibit 1. *Note: The Lopez Denial in the Lopez UF is claimed to be supported by evidence not part of the record in his Summary Judgment Motion. To the extent that the proffered evidence is part of the Lopez Opposition to the Petitioning Creditors' Motion for Summary Judgment, it will be addressed in their Reply.*

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124. On April 4, 2005, Lopez transferred $40.00 to Texaco on account of the pre-petition debt.	LSK Decl. ¶ 15, Exhibit N, Compass Bank ["CB"] 0030. *Note: The Lopez Denial in the Lopez UF is claimed to be supported by evidence not part of the record in his Summary Judgment Motion. To the extent that the proffered evidence is part of the Lopez Opposition to the Petitioning Creditors' Motion for Summary Judgment, it will be addressed in their Reply.*
125. On May 9, 2005, Lopez transferred $20.00 to Texaco on account of the pre-petition debt.	LSK Decl. ¶ 15, Exhibit N, CB 0034. *Note: The Lopez Denial in the Lopez UF is claimed to be supported by evidence not part of the record in his Summary Judgment Motion. To the extent that the proffered evidence is part of the Lopez Opposition to the Petitioning Creditors' Motion for Summary Judgment, it will be addressed in their Reply.*
126. As of June 30, 2005, Lopez was indebted to Texaco/Shell Oil in the amount of $350.20.	Lopez Depo. Exhibit 17 at page 2; Lopez Depo. Exhibit 23 at page 1; Lopez Depo. page 146, lines 2-23; page 147, lines 14-17. **Lopez UF 126.**
127. Texaco accepted payment on accounts from Lopez after June 30, 2005.	Lopez Depo. page 173, line 24 - page 174, line 5. **Lopez UF 127.**
128. On or about August 9, 2005, Lopez paid $50.99 on account of the pre-petition obligation.	Lopez Depo. page 147, lines 18-23; Lopez Depo. Exhibit 23 at page 2. **Lopez UF 128.**
129. On September 26, 2005, Lopez made a payment to Texaco/Shell Oil in the amount of $10 on account of the pre-petition obligation.	Lopez Depo. Exhibit 14 at page 4. **Lopez UF 129.**
130. On October 24, 2005, Lopez made a payment to Texaco/Shell in the amount of 25.00 on account of the pre-petition obligation.	Lopez Depo. Exhibit 14 at pages 4-5. **Lopez UF 130.**
131. The post-petition payments were made from the Compass Bank Checking account.	Lopez Depo. page 148, lines 4-6. *Note: The Lopez Denial in the Lopez UF is claimed to be supported by evidence not part of the record in his Summary Judgment Motion. To the extent that the proffered evidence is part of the Lopez Opposition to the Petitioning Creditors' Motion for Summary Judgment, it will be addressed in their Reply.*

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VALLEY FORGE LIFE INSURANCE IS NOT A CREDITOR BECAUSE LOPEZ NEVER OWED IT ANY MONEY (AND NEITHER DID HIS WIFE, MADELEINE) AS OF JUNE 30, 2005	
132. Lopez has asserted that as of June 30, 2005, he is indebted to the Valley Forge Life Insurance company in the amount of "$0.00($486.00 per year)".	Lopez Depo. Exhibit 17 at page 3. **Lopez UF 132.**
133. Lopez has produced any and all documents evidencing any and all payments he made to Valley Forge Life Insurance (identified as one of his creditors) during the time period of June 30, 2005 through April 27, 2006.	Lopez Depo. page 12, lines 1-8; page 14, lines 2-3; Lopez Depo. Exhibit 1. *Note: The Lopez Denial in the Lopez UF is claimed to be supported by evidence not part of the record in his Summary Judgment Motion. To the extent that the proffered evidence is part of the Lopez Opposition to the Petitioning Creditors' Motion for Summary Judgment, it will be addressed in their Reply.*
134. However, Lopez is not the account debtor for that obligation.	Lopez Depo. page 195, line 22 - page 197, line 8; see also Lopez Depo. Exhibit 16. *Note: The Lopez Denial in the Lopez UF is claimed to be supported by evidence not part of the record in his Summary Judgment Motion. To the extent that the proffered evidence is part of the Lopez Opposition to the Petitioning Creditors' Motion for Summary Judgment, it will be addressed in their Reply.*
135. Madeleine Lopez — the alleged debtor's spouse — not Lopez himself, is the account debtor obligated to pay the Valley Forge Life Insurance obligation.	LSK Decl. ¶ 13, Exhibit L, pages 2-3. *Note: The Lopez Denial in the Lopez UF is claimed to be supported by evidence not part of the record in his Summary Judgment Motion. To the extent that the proffered evidence is part of the Lopez Opposition to the Petitioning Creditors' Motion for Summary Judgment, it will be addressed in their Reply.*
136. Madeleine Lopez, the account debtor with respect to the Valley Forge Life Insurance Obligation, pays that obligation through Noveon Systems, Inc. (a corporation in which she is the sole owner/shareholder) of which she is the sole authorized signatory on its bank accounts, and signs all of its checks upon reviewing the same.	LSK Decl. ¶ 13, Exhibit L, page 3 and LSK Decl. ¶ 14, Exhibit M [Madeleine Lopez Depo. Transcript ("Excerpts")], page 36, lines 10-24; page 39, lines 10-17; page 41, lines 20-23; page 53, line 2 - page 54, line 4; and page 54, line 23 - page 55, line 6. **Lopez UF 136.**

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137. There was no amount due to Valley Forge Life Insurance Company on June 30, 2006, because that annual premium had been paid at or shortly after February 5, 2005.	Lopez Depo. Exhibit 34 (annual renewal premium due February 5, 2005); Lopez Depo. page 198, line 24 - page 199, line 18. *Note: The Lopez Denial in the Lopez UF is claimed to be supported by evidence not part of the record in his Summary Judgment Motion. To the extent that the proffered evidence is part of the Lopez Opposition to the Petitioning Creditors' Motion for Summary Judgment, it will be addressed in their Reply.*
THE VERIZON CLAIM WAS DISPUTED AS OF JUNE 30, 2005, BUT SUBSEQUENTLY PAID BY A VOIDABLE POST-PETITION TRANSFER	
138. Lopez has produced any and all documents evidencing any and all payments he made to Verizon Wireless (identified as one of his creditors) during the time period of June 30, 2005 through April 27, 2006.	Lopez Depo. page 12 lines 1-8; page 13, lines 14-15; Lopez Depo. Exhibit 1. *Note: The Lopez Denial in the Lopez UF is claimed to be supported by evidence not part of the record in his Summary Judgment Motion. To the extent that the proffered evidence is part of the Lopez Opposition to the Petitioning Creditors' Motion for Summary Judgment, it will be addressed in their Reply.*
139. On or about April 21, 2005, Verizon Wireless forwarded to Lopez an invoice for charges totaling $262.47.	Lopez Depo. Exhibit 24 (the "4/21/05 invoice"). **Lopez UF 139.**
140. Lopez disputed the validity and amount of the 4/21/05 invoice to the extent that it exceeded $35.	Lopez Depo. page 151, line 5 - page 152, line 21. *Note: The Lopez Denial in the Lopez UF is claimed to be supported by evidence not part of the record in his Summary Judgment Motion. To the extent that the proffered evidence is part of the Lopez Opposition to the Petitioning Creditors' Motion for Summary Judgment, it will be addressed in their Reply.*
141. As of June 30, 2005, the disputed portion of the Verizon obligation – in excess of $200 – had not been paid; however the disputed obligation was ultimately paid by Lopez on August 3, 2005.	Lopez Depo. page 153, line 17 - page 154, line 19; Lopez Depo. Exhibit 15 at page 3. *Note: The Lopez Denial in the Lopez UF is claimed to be supported by evidence not part of the record in his Summary Judgment Motion. To the extent that the proffered evidence is part of the Lopez Opposition to the Petitioning Creditors' Motion for Summary Judgment, it will be addressed in their Reply.*

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WAYNE WISE RECEIVED A PRE-PETITION PREFERENCE	
142. Lopez has produced any and all documents evidencing any and all payments he made to Wayne Wise (identified as one of his creditors) during the time period of June 30, 2005 through April 27, 2006.	Lopez Depo. page 12, lines 1-8; page 13, line 35 - page 14, line 1; Lopez Depo. Exhibit 1. **Lopez UF 142.**
143. Lopez obligation to Wayne M. Wise is memorialized by a promissory note dated June 16, 2004.	Lopez Depo. page 133, line 11-16; Lopez Depo. Exhibit 19. **Lopez UF 143.**
144. The obligation owed by Lopez to Wayne Wise is unsecured.	Lopez Depo. page 110, line 21 - page 113, line 10.
145. On May 17, 2005, Lopez paid Wayne Wise the sum of $900 for the interest that had accrued under the June 16, 2004, promissory note.	Lopez Depo. page 113, line 17 - page 115, line 22. *Note: The Lopez Denial in the Lopez UF is claimed to be supported by evidence not part of the record in his Summary Judgment Motion. To the extent that the proffered evidence is part of the Lopez Opposition to the Petitioning Creditors' Motion for Summary Judgment, it will be addressed in their Reply.*
146. Other than the payment of $900 interest paid on May 17, 2005, no other payments have been made on the promissory note to Wayne M. Wise.	Lopez Depo. page 201, lines 20-23. **Lopez UF 146.**
147. That payment was not made in accordance with the terms of the promissory note (i.e. it was less than the full amount due).	Lopez Depo. Exhibit 19. *Note: The Lopez Denial in the Lopez UF is claimed to be supported by evidence not part of the record in his Summary Judgment Motion. To the extent that the proffered evidence is part of the Lopez Opposition to the Petitioning Creditors' Motion for Summary Judgment, it will be addressed in their Reply.*
UNION BANK OF CALIFORNIA RECEIVED BOTH PRE-PETITION PREFERENCES AND AVOIDABLE POST-PETITION TRANSFERS	
148. Lopez has produced any and all documents evidencing any and all payments he made to Union Bank of California (identified as one of his creditors) during the time period of June 30, 2005 through April 27, 2006.	Lopez Depo. page 12, lines 1-8; page 13, lines 18-19; Lopez Depo. Exhibit 1. *Note: The Lopez Denial in the Lopez UF is claimed to be supported by evidence not part of the record in his Summary Judgment Motion. To the extent that the proffered evidence is part of the Lopez Opposition to the Petitioning Creditors' Motion for Summary Judgment, it will be addressed in their Reply.*

149. In April, May, and June of 2005, Lopez paid $1,000 per month to Union Bank on account of its compromise/settlement agreement.	Lopez Depo. page 204, line 3. **Lopez UF 149.**
150. On April 13, 2005, Lopez transferred $500.00 to Union Bank of California on account of the pre-petition debt.	LSK Decl. ¶ 15, Exhibit N, CB 0168. *Note: The Lopez Denial in the Lopez UF is claimed to be supported by evidence not part of the record in his Summary Judgment Motion. To the extent that the proffered evidence is part of the Lopez Opposition to the Petitioning Creditors' Motion for Summary Judgment, it will be addressed in their Reply.*
151. On April 13, 2005, Lopez made a second $500.00 transfer to Union Bank on account of the pre-petition debt.	LSK Decl. ¶ 15, Exhibit N, CB 0169. *Note: The Lopez Denial in the Lopez UF is claimed to be supported by evidence not part of the record in his Summary Judgment Motion. To the extent that the proffered evidence is part of the Lopez Opposition to the Petitioning Creditors' Motion for Summary Judgment, it will be addressed in their Reply.*
152. On May 18, 2005, Lopez transferred $1,000.00 to Union Bank of California on account of his pre-petition debt.	LSK Decl. ¶ 15, Exhibit N, CB 0180. *Note: The Lopez Denial in the Lopez UF is claimed to be supported by evidence not part of the record in his Summary Judgment Motion. To the extent that the proffered evidence is part of the Lopez Opposition to the Petitioning Creditors' Motion for Summary Judgment, it will be addressed in their Reply.*
153. As of June 30, 2005, Lopez was indebted to Union Bank in an amount at least equal to $4,000.	Lopez Depo. Exhibit 17 at page 2. **Lopez UF 153.**
154. That obligation reflected a settlement compromise agreement with Union Bank.	Lopez Depo. page 202, lines 1-16. **Lopez UF 154.**
155. Since June of 2005, Union Bank has received monthly payments that have completely satisfied Lopez's compromise/settlement obligation, and all payments were made from the Compass Bank account.	Lopez Depo. page 204, line 10 - page 207, line 2; Lopez Depo. Exhibit 6, page 3 (check no. 1683); Lopez Depo. Exhibit 6, page 4 (check no. 1676); Lopez Depo. Exhibit 7, page 1 (check no. 1620). **Lopez UF 155.**
156. On July 8, 2005, Union Bank received a payment from Lopez in the amount of one thousand dollars on account of the debt owed to that entity and referred to on the debtor's "list of creditors."	Lopez Depo. page 83, line 1 - page 85, line 6; Lopez Depo. Exhibit 7, page 1 (check no. 1620, $1,000 dated 6/30/05 and cleared on 7/8/05); and LSK Decl. ¶ 15, Exhibit N, CB 0186. **Lopez UF 156.**

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157. On August 8, 2005, Lopez transferred $1,000.00 to Union Bank of California on account of his pre-petition debt.	LSK Decl. ¶ 15, Exhibit N, CB 0191. *Note: The Lopez Denial in the Lopez UF is claimed to be supported by evidence not part of the record in his Summary Judgment Motion. To the extent that the proffered evidence is part of the Lopez Opposition to the Petitioning Creditors' Motion for Summary Judgment, it will be addressed in their Reply.*
158. On September 8, 2005, Union Bank of California received a payment in the amount of $1,000 from Lopez on account of the obligation reflected in the "list of creditors."	Lopez Depo. page 83, line 19 - page 85, line 6; Lopez Depo. Exhibit 6, page 4, column 1, row 2 (check no. 1676); and LSK Decl. ¶ 15, Exhibit N, CB 0199. **Lopez UF 158.**
159. On October 6, 2005, Union Bank of California received a payment in the amount of $1,000 from Lopez.	Lopez Depo. page 83, line 19 - page 85, line 6; Lopez Depo. Exhibit 6, page 3 (check no. 1683); and LSK Decl. ¶ 15, Exhibit N, CB 0206. **Lopez UF 159.**
160. On or about October 31, 2005, Lopez transferred $1,000.00 to Union Bank of California on account of his pre-petition debt.	LSK Decl. ¶ 15, Exhibit N, CB 0210. *Note: The Lopez Denial in the Lopez UF is claimed to be supported by evidence not part of the record in his Summary Judgment Motion. To the extent that the proffered evidence is part of the Lopez Opposition to the Petitioning Creditors' Motion for Summary Judgment, it will be addressed in their Reply.*
161. On November 7, 2005, Union Bank received a payment from Lopez in the amount of one thousand dollars on account of the obligation owed to it as a creditor identified on the debtor's "list of creditors."	Lopez Depo. page 83, line 1 - page 85, line 6; Lopez Depo. Exhibit 7, page 3 (check no. 1688 for $1,000). **Lopez UF 161.**
162. On December 12, 2005, Union Bank received a payment from Lopez in the amount of one thousand dollars on account of the obligation owed to it as a creditor identified on the debtor's "list of creditors."	Lopez Depo. page 83, line 1 - page 85, line 6; Lopez Depo. Exhibit 7, page 2 (check no. 1692 for $1,000); and LSK Decl. ¶ 15, Exhibit N, CB 0213. **Lopez UF 162.**
163. On January 11, 2006, Lopez transferred $1,000.00 to Union Bank of California on account of his pre-petition debt.	LSK Decl. ¶ 15, Exhibit N, CB 0216. *Note: The Lopez Denial in the Lopez UF is claimed to be supported by evidence not part of the record in his Summary Judgment Motion. To the extent that the proffered evidence is part of the Lopez Opposition to the Petitioning Creditors' Motion for Summary Judgment, it will be addressed in their Reply.*

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LOPEZ HAS PREVIOUSLY TESTIFIED THAT HE HAD NO MORE THAN SEVEN CREDITORS	
164. In May of 2005, Lopez was indebted to his father Frederick in the amount of approximately $20,000.	Lopez Exam at page 21 lines 2 to 11.
165. In May, 2005, Lopez was indebted to his brother Mike in the amount of approximately $17,000.	Lopez Exam at page 22 lines 6 to 13.
166. In May, 2005, Lopez estimated his total credit card debt to be approximately $60,000. In May of 2005, the only creditors that Lopez could think of were his Mastercard from CitiBank, his Fleet credit card, maybe the Amex card, his father and his brother (a total of five).	Lopez Exam at page 22 lines 18 to 21 (reference page 19 line 17 through page 22 line 21).
167. On further examination, Lopez was able to recall an additional loan in the amount of $15,000 he took from his friend, Wayne Wise.	Lopez Exam at page 28 lines 11 to 22.
168. As of May 9, 2005, that debt was still outstanding.	Lopez Exam at page 28 lines 21 to 22.
169. On further examination, Lopez admits there might be a medical debt owed to the Fort Walton Beach Medical Center (that would bring the total creditors list to seven).	Lopez Exam at page 58 lines 19 to 23.
170. He also indicates that there are "a couple of others that I can't recall the names of them".	Lopez Exam at page 59 lines 3 to 5.
LOPEZ HAS NO SECURED DEBT	
171. The original purchase money obligation secured by the Lopez residence at 310 Sand Myrtle Trail, Destin, Florida, had been previously paid off.	Lopez Depo at page 103 lines 12 to 21 and page 104 lines 7-12.
172. Mrs. Lopez is the only borrower on the obligation secured by the current first mortgage against the Lopez residence.	Lopez Depo at page 104 lines 7-12 and page 104 line 17 to page 105 line 15; page 108 lines 16-24.
173. Mrs. Lopez is the only borrower on the obligation secured by the current second mortgage against the Lopez residence.	Lopez Depo at page 116 line 7 to page 117 line 8.
174. Lopez is not responsible for the purchase money debt obligation on the 2005 Chevy Suburban.	Lopez Exam at page 42 lines 7 to 15.

175. There is no outstanding debt associated with the 1997 Ford.	Lopez Exam at page 42 lines 16 to 17.
THERE IS SIGNIFICANT EVIDENCE TO SHOW THAT LOPEZ IS NOT GENERALLY PAYING HIS DEBTS AS THEY COME DUE	
176. Lopez himself admits that he does not always pay his debts as they come due.	Declaration of Francis Lopez submitted in support of his Motion for Summary Judgment ("Lopez SJM Decl") at page 14 lines 24-25.
177. Lopez himself admits that he is deliberately not paying the judgment against him held by Stanly.	Lopez SJM Decl at page 14 lines 26-27.

Dated: June 14, 2006

ROBBINS & KEEHN
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By: //s// L. Scott Keehn
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UNITED STATES BANKRUPTCY COURT

SOUTHERN DISTRICT OF CALIFORNIA

In Re: FRANCIS J. LOPEZ, Alleged Debtor	Case No. 05-05926-PBINV Involuntary Chapter 7 **EVIDENTIARY OBJECTIONS AND MOTION TO STRIKE PORTIONS OF THE DECLARATION OF FRANCIS J. LOPEZ MADE IN SUPPORT OF MOTION BY ALLEGED DEBTOR FOR SUMMARY JUDGMENT AND AN ORDER DISMISSING INVOLUNTARY PETITION** Date: June 26, 2006 Time: 2:00 p.m. Judge: The Honorable Peter W. Bowie Ctrm: 4

TO: THE HONORABLE PETER W. BOWIE, UNITED STATES BANKRUPTCY JUDGE:

The Petitioning Creditors herein respectfully submit the following evidentiary objections, and hereby move to strike the specified portions of the "Declaration of Francis Lopez" submitted in support of Motion by Alleged Debtor for Summary Judgment and an Order Dismissing Involuntary Petition (the "Lopez Declaration").

REQUEST FOR RULING ON OBJECTIONS AND MOTION TO STRIKE

The Petitioning Creditors respectfully request that this Court issue rulings on the following evidentiary objections and motion to strike prior to ruling on the merits of the Alleged Debtor's Motion.

EVIDENTIARY OBJECTIONS

Any and all evidence proffered in support of a Motion for Summary Judgment must be admissible pursuant to the Federal Rules of Evidence ("FRE"), made applicable herein by Rule 9017 of the Federal Rules of Bankruptcy Procedure.[1] Based on that mandate, the following improper portions of the Lopez Declaration should be stricken:

TESTIMONY	OBJECTIONS
1. **Paragraph 2, in its entirety:** "I spoke with Eleanor Hypes, who is a clerk at NWF Daily News who signed the petition. She has no idea what she got herself into, but was very nervous and reluctant to talk. I disputed the bill with her, and she gave me the name of a payables clerk to talk to, who hasn't called me back yet."	**Irrelevant.** This first phase of the bifurcated proceedings focuses exclusively on the number of Lopez's qualifying creditors under 11 U.S.C. §303(b). The proffered testimony has no bearing on whether NWF Daily News is a qualifying creditor. FRE 402. **Hearsay:** Everything after the first sentence is a classic declaration offered to show the truth of the matter asserted, and must be stricken. FRR 801, 802.
2. **Paragraph 3 in its entirety:** "Attached hereto as Exhibit A is a true and correct copy of the answer I filed in this case."	**Sham Affidavit Doctrine:** To the extent that this testimony is proffered to support Lopez's contention that he has more than 12 Creditors, it contradicts prior deposition testimony, and must be stricken under the Sham Affidavit Doctrine. *Hambleton Bros. Lumber Co. v. Balkin Enterprises, Inc.* 397 F3d 1217, 1225 (C.A. 9 (OR) 2005), citing *Kennedy v. Allied Mut. Ins. Co.*, 952 F2d, 262, 266(9th Cir 1991). See also Petitioning Creditors' Memorandum of Points and Authorities in Opposition etc (Creditors' P&A), at Part III.A. for discussion of Sham Affidavit Doctrine and additional support from other circuits. See also Creditors' Statement of Undisputed Facts [CSUF] at 164-170 re Lopez original Deposition Testimony that he had no more than 7-9 creditors (including his father and brother).

[1] FRCP 56(e) [FRBP 9014(c)]; *U.S. v. Crisp*, 190 F.R.D. 546, 550 (E.D.Cal. 1999).

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TESTIMONY	OBJECTIONS
3. **Paragraph 6, lines 21-23:** "Newspapers and utilities and insurance companies do not continue to provide services if the buyer is not generally paying his debts as they become due."	**Irrelevant.** This first phase of the bifurcated proceedings focuses exclusively on the number of Lopez's qualifying creditors under 11 U.S.C. §303(b). Thus, any evidence regarding the second-phase inquiry regarding whether Lopez was generally paying his debts as they came due, is irrelevant and improper. FRE 402. **Lack of Personal Knowledge.** Lopez has not established that he has first-hand, personal knowledge of the business practices of the unnamed newspaper, utility and insurance companies referred to in Paragraph 6 of the Lopez Declaration. FRE 602; *Latman v. Burdette*, 366 F.3d 774, 786-787 (9th Cir. 2004) (a declarant is required to have personally "perceived or observed that which he testifies to"). **Lack of Foundation.** Lopez failed to establish the appropriate foundation on which he bases his assertion regarding the business practices of the unnamed newspaper, utility and insurance companies referred to in Paragraph 6 of the Lopez Declaration. Without this essential foundation, the testimony is inadmissible. FRE 104. **Improper Opinion.** Lopez is not qualified to opine on the standard business practices of the unnamed newspaper, utility and insurance companies referred to in Paragraph 6 of the Lopez Declaration. Fails to identify facts upon which the opinion is based. FRE 701.
4. **Paragraph 6, lines 23-25:** "I was paying my mortgages and other secured creditors generally as they become due. Bills are occasionally paid beyond the due date, but with very few exceptions, within 30 days of receipt."	**Sham Affidavit Doctrine:** This testimony is contrary to Lopez's earlier deposition testimony which established that the existing mortgages against his residence are the sole obligation of his wife, and that he is not obligated on any other known secured obligations. This testimony is a Sham Affidavit and must be stricken under the Sham Affidavit Doctrine. (See authorities cite in objection 2 above and Creditors P&A at Part III.A.) See also CSUF at 171-175 re Lopez original testimony that the secured debts are not his. **Irrelevant.** This first phase of the bifurcated proceedings focuses exclusively on the number of Lopez's qualifying creditors under 11 U.S.C. §303(b). Thus, any evidence regarding the second-phase inquiry regarding whether Lopez was paying his debts as they came due, is irrelevant and improper. FRE 402. Moreover, Lopez never specifically identifies which "mortgages and other secured creditors" he is referring to here. Without that basic specificity, the testimony is irrelevant. FRE 402.

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TESTIMONY	OBJECTIONS
5. **Paragraph 7, lines 26-27:** "I have not been paying Stanly because I believe that the judgment will be overturned on appeal."	**Irrelevant.** This first phase of the bifurcated proceedings focuses exclusively on the number of Lopez's qualifying creditors under 11 U.S.C. §303(b). Thus, any evidence regarding the second-phase inquiry regarding whether Lopez was generally paying his debts as they came due, is irrelevant and improper. FRE 402.
6. **Paragraph 7, lines 27-28:** "I offered in April, 2006, to pay Stanly in full in return for a dismissal of this case and that offer was rejected."	**Irrelevant.** This testimony has no bearing on the first phase of this bifurcated proceeding which is intended solely to determine the number of Lopez's qualifying creditors under 11 U.S.C. §303(b). FRE 402. **Inadmissible Offer to Compromise.** Evidence of a settlement offer is inadmissible. FRE 408. See Declaration of L. Scott Keehn filed concurrently herewith (LSK 6/14/06 Decl.) at ¶ 2 re inconsistency.
7. **Paragraph 8, in its entirety:** "None of the 22 creditors are an employee or insider of mine."	**Sham Affidavit Doctrine:** To the extent that this testimony is intended to challenge the fact that Lopez is a 50% shareholder of Prism (see CSUF 121) it represents a contradiction from his earlier testimony and must be stricken under the Sham Affidavit Doctrine (see Objection 2 above and Creditors' P&A at III.A.) **Improper Opinion.** Lopez is not qualified to proffer the legal conclusion that none of the creditors listed in his Answer are "employees" or "insiders" for purposes of determining the number of qualifying creditors under 11 U.S.C. §303(b). Fails to identify facts upon which the opinion is based. FRE 701.
8. **Paragraph 9, in its entirety:** "None of the 22 creditors received any payments or transfers from me for less than fair value or with my intent to delay, hinder or defraud my creditors."	**Improper Opinion.** Lopez is not qualified to proffer the legal conclusion that none of the creditors listed in his Answer received improper payments/transfers for purposes of determining the number of qualifying creditors under 11 U.S.C. §303(b). Fails to identify facts upon which opinion is based. FRE 701.

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TESTIMONY	OBJECTIONS
9. **Paragraph 10, in its entirety:** "None of the 22 creditors are contingent as to liability or disputed except as to Northwest Daily News."	**Sham Affidavit Doctrine:** To the extent that this testimony is offered to assert that as of June 30, 2005, Lopez had no bonafide dispute as to his liability or the amount of his liability owed to Bank Card Services, Fort Walton Beach Medical Center, and Verizon Wireless, this contradicts Lopez's deposition testimony and must be stricken under the Sham Affidavit Doctrine (see Objection 2 above and Creditors' P&A at III.A.). See also CSUF 60 (Bank Card dispute); CSUF 84 (Fort Walton Beach Medical dispute); and CSUF 140, 141 (Verizon dispute). **Improper Opinion.** Lopez is not qualified to proffer legal conclusions regarding the "contingent" or "disputed" status of the debts identified in his Answer for purposes of determining the number of qualifying creditors under 11 U.S.C. §303(b). Fails to identify facts upon which opinion is based. FRE 701.
10. **Paragraph 11, in its entirety:** "I was generally paying my debts as they became due prior to June 30, 2005."	**Irrelevant.** This testimony has no bearing on the first phase of this bifurcated proceeding which is intended solely to determine the number of Lopez's qualifying creditors under 11 U.S.C. §303(b). FRE 402. Any evidence regarding the second-phase inquiry regarding whether Lopez was generally paying his debts as they came due, is irrelevant and improper. FRE 402. **Improper Opinion:** Lopez is not qualified to proffer legal conclusions or the ultimate issue of whether or not he is generally paying his debts as they are due. He also fails to identify the facts upon which his opinion is predicated. FRE 701.

Dated: June 14, 2006

ROBBINS & KEEHN
A Professional Corporation

By: //s// L. Scott Keehn
L. Scott Keehn
Leslie F. Keehn
Attorneys for Petitioning Creditors

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UNITED STATES BANKRUPTCY COURT

SOUTHERN DISTRICT OF CALIFORNIA

In Re: FRANCIS J. LOPEZ, Alleged Debtor	Case No. 05-05926-PBINV Involuntary Chapter 7 **DECLARATION OF ALAN STANLY IN OPPOSITION TO ALLEGED DEBTOR'S MOTION FOR SUMMARY JUDGMENT AND ORDER DISMISSING INVOLUNTARY PETITION** Date: June 26, 2006 Time: 2:00 p.m. Judge: The Honorable Peter W. Bowie Ctrm: 4

I, ALAN STANLY, declare as follows:

1. I am over the age of 18, and am one of the petitioning creditors herein.

2. On May 9, 2005, I caused the deposition (judgment debtor's exam) of Francis J. Lopez to be taken through the law firm of Richard H. Powell and Associates of Fort Walton Beach, Florida, as part of my effort to collect my judgment issued from the Superior Court for the State of California, County of San Diego, North County Branch, in the case entitled *Union Bank of California, N.A. v. Francis J. Lopez, et al,* Case No. GIN 030827, the claim that I relied upon when initiating this involuntary petition. I telephonically attended that deposition/ judgment

debtor's exam, I heard all the questions that were asked, and the answers given, as well as all other matters stated on the record in that proceeding.

3. I also received a copy of the reporters transcript of that deposition/ judgment debtor's exam.

4. Attached hereto, marked Exhibit A, and incorporated herein by this reference is a true copy of the reporter's transcript of that deposition/ judgment debtor's exam.

5. I have first hand knowledge of all of the foregoing, and if called as a witness could, and would, testify to the facts stated above.

I declare under penalty of perjury that the foregoing is true and correct.

Executed June 13, 2006 at San Marcos, California.

//s// Alan Stanly
ALAN STANLY

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NOTE: This electronic copy of the deposition transcript as been forwarded in "ASCII" format, and has been opened using the "Notepad" program. When the Notepad document is printed it produces its own notepad page numbers at the bottom center of the page. However, the transcript page numbers appear in the upper right hand corner of the transcript itself, immediately above line 1 for each respective page. In order to avoid ambiguity as to line references, all page citations to this transcript refer to the transcript page number that appears in the upper right hand corner.

May 9, 2005
Deposition of Francis J. Lopez

Exhibit A

05106.txt

IN THE CIRCUIT COURT FOR
OKALOOSA COUNTY, FLORIDA
CASE NO. 2004CA004439

FROM THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN DIEGO, NORTH COUNTY BRANCH
CASE NO: GIN 030827

UNION BANK OF CALIFORNIA, N.A.,
A National Banking Association
Plaintiff,

vs.

FRANCIS J. LOPEZ, ALAN STANLY
And Does I through Does IV
Inclusive
Defendants.

AND RELATED CROSS ACTIONS
_______________________________________/

The Deposition of FRANCIS J. LOPEZ taken by the attorney for Alan Stanly, commencing at 2:05 p.m. on the 9th day of May, 2005, at Richard H. Powell & Associates, 92 Eglin Parkway, NE, Fort Walton Beach, Florida, before Wanda M. Pearcey, Court Reporter and Notary Public at Large, in and for the State of Florida.

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APPEARANCES

FOR ALAN STANLY: RICHARD H. POWELL, ESQUIRE
Richard H. Powell & Assoicates
92 Eglin Parkway, NE
Ft. Walton Beach, FL 32549

FOR FRANCIS LOPEZ:

JENNIFER A. WINTRODE, ESQUIRE
Attorney at Law
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WHEREUPON,

FRANCIS J. LOPEZ

was called as a witness and, after having been first duly sworn, was deposed and testified as follows:

DIRECT EXAMINATION

BY MR. POWELL:

Q. State your full name for the record, please.

A. Francis J. Lopez.

Q. Mr. Lopez, my name is Rick Powell and I represent a Mr. Alan Stanly in connection with a judgment that he obtained against you in the state of California. Have you ever had your deposition taken before?

A. Yes.

Q. As you probably recall the purpose is to allow me to ask you questions that are relevant to the notice that I've given you to appear today.

A. Yes.

Q. Any questions that I ask you are not designed to trick you or confuse you or embarrass you. If you don't understand the question, please state it and I will be glad to try to clarify the question.

A. Okay.

Q. Any time you want to take a break, we can do that, just let us know and we can go off the record.

MR. STANLY: Can you please move the

microphone a little bit closer to Mr. Lopez?

MR. POWELL: All right.

Q. (By Mr. Powell) You will have to speak up a little so the court reporter can record your responses. If you can answer with a yes and no as opposed to uh-huh or uh-uh, it's a lot easier to transcribe, I would appreciate that also. Is that fair enough?

A. That's fair enough.

Q. Okay. What is your current residence?

A. 310 Sand Myrtle Trail.

Q. Okay.

A. Destin, Florida.
Q. Okay. How long you lived there?
A. Just under two years.
Q. Who resides at that address with you?
A. My wife and my two sons.
Q. Your wife's full name is?
A. Madeline.
Q. And are the children minor children?
A. Yes.
Q. And that property is titled in your name and your wife's name?
A. That's correct.
Q. Are there any mortgages on that property?
A. Yes.

Q. How many?
A. One.
Q. And who holds that mortgage?
A. That is with Aurora Loan.
Q. And when did you take out that mortgage?
A. It would have been November 2003.
MR. STANLY: Mr. Lopez, speak up, please.
THE WITNESS: I'm sorry, November 2004, excuse me.
Q. (By Mr. Powell) All right. So you originally acquired the property, I believe, on July the 15th of 2003?
A. It would have been in July of 2003.
Q. From Mr. and Mrs. Jeffrey Fudge?
A. That's correct.

Q. All right. And did you finance that transaction? Was there a mortgage purchase or any --

A. Yes.

Q. What was the purchase price of the property?

A. It was 745,000.

Q. How much of that did you finance?

A. I want to say roughly 600,000, approximately.

Q. All right. And the original mortgage holder was?

A. Original mortgage holder was Wells Fargo, I believe.

Q. All right. And you refinanced it in November of this past year?

A. Yes.

Q. That's the only refinancing that you've done on this property?

A. That's correct.

Q. Okay. What was the principal amount of the loan with Aurora when you originally took it out?

A. It would have been in the neighborhood of 750,000.

Q. Did you get an appraisal in connection with the refinancing?

A. I'm sure I did.

Q. Do you recall what the appraised value was?

A. No, I don't.

Q. Do you still have that appraisal?

A. I never got a copy of the appraisal.

Q. What is your estimate of the value of that home at this time?

A. My best estimate is somewhere around 1.2 million.

Q. Okay. What is your Social Security number?

A. 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.

Q. Have you ever been known by any other names besides Francis Lopez?

A. Francis Lopez or Francis J. Lopez.

Q. Okay. What's your educational background?

A. I have a high school diploma and a four-year BA degree.

Q. Where did you obtain your BA degree?

A. University of California, San Diego.

Q. And in what discipline?

A. Economics and political science.

Q. Are you currently employed?

A. Yes.

Q. Where?

A. Noveon Systems, N-o-v-e-o-n, Systems.

Q. Is that a corporation?

A. Yes.

Q. So is the technical name Noveon Systems, Inc.?

A. That's correct.

Q. What state was this formed in?

A. It was -- what state was it incorporated in?

Q. Yes.

A. Delaware.
Q. When?
A. Approximately June of 2003.,

Q. Who are the shareholders of that corporation?
MS. WINTRODE: He's only an employee of the corporation.
MR. POWELL: Right.
MS. WINTRODE: So he's not a shareholder of it.
MR. POWELL: Okay. Well, then he can tell me that then.
THE WITNESS: I am not a share holder of the company.
Q. (By Mr. Powell) Are you an officer in the corporation?
A. No.
Q. Are you a director?
A. No.
Q. How long have you been employed by the company?
A. Since approximately July of 2003.
Q. Who is your immediate supervisor?
A. Madeline Lopez.
Q. Your wife?
A. Yes.
Q. What office does she hold in this corporation?
A. She's the president.

Q. Are there any other officers?
A. No.
Q. Is she the sole director?
A. Yes.
Q. And what are your duties with this company?
A. My duties are to participate in a sales capacity, to assist in development of work for clients, and to direct contractors to perform work.
Q. And what's the general purpose of Noveon System? What product does it sell or produce or what service does it provide?
A. Technology consulting.
Q. Have you developed any software on behalf of that company since you've been employed by it?
A. Myself personally?
Q. Yes, sir.
A. No.
Q. How many employees does the corporation have?
A. It has two.
Q. Yourself and --
A. Madeline.
Q. Has it had any other employees since its formation in June of 2003, besides the two of you?
A. No.

Q. What is your current salary with this

company?
A. Currently not taking a salary.
Q. Have you received any remuneration from this company?
A. Yes.
Q. When is the last time you received any compensation?
A. It would have been 2004. I received partial payment for a license that I sold the company.
Q. And what license was that that you sold the company?
A. A license to provide software that I own.
Q. That you currently own?
A. Yes.
Q. What software do you own?
A. I own various freight transportation related software.
Q. Okay. How did you come to acquire this software?
A. That's a pretty long story, but essentially, I purchased the software in the early '90s and Mr. Stanly, your client, and I developed a software over a number of years.
Q. The software that you acquired in the early

'90s, where were you employed at that time?
A. A company called Metro Consolidation Carrier, Inc.
Q. Were you and Mr. Stanly doing business

together at that time?

A. No.

Q. What software did you develop with Mr. Stanly?

A. We developed a package for -- a software package for LTL companies. LTL stands for less-than-truckload.

Q. Okay.

A. Essentially it was a dispatch and billing program.

Q. And do you still possess that software?

A. Yes, I do.

Q. You say you developed it with Mr. Stanly. Where were y'all employed at the time of the development?

A. He was working on a -- he was a sole proprietor, then I had -- I was president at Metro Consolidation Carrier, Inc., and then later on, I had a company called Prism Freight Services, Inc.

Q. Okay. The software that you and Mr. Stanly developed together, does he own half interest of this?

A. Well, that's all part of the lawsuit that's

taking place in California right now, but I had my own interest in it and he had his own interest it in.

Q. Okay. What percentage do you claim ownership of in this particular software?

A. I claim ownership of everything that I have, so does he. So there is an item of dispute over the ownership.

Q. All right. So are you saying that it is going to be an either/or situation, all or none, as opposed to each one of you owning 50 percent share in that software?

A. We had an agreement when we separated that we each would have our own free and clear title to the software.

Q. Okay. And the software that you possessed that you and Mr. Stanly had an agreement about, can you identify that more specifically for the record as to what software we're talking about?

A. Well, we're talking about LTL software, that you already mentioned, and it has a related software program for P and D companies. There are also a number of other programs related to freight transportation, and there's a document scanning program as well.

Q. Are these the software that you just mentioned in response to my last question, are these being

used by your present company?

A. Only one -- two of those are.

Q. Which ones?

A. One is the LTL system. The other one is a scanning program. That's a scanning system that basically has been rewritten, but it may have some elements of the original scanning program that I developed with Mr. Stanly.

Q. And that's the document scanning program you referred to?

A. That's correct.

Q. Who rewrote that program?

A. One of the contractors working for Noveon.

Q. And who would that be?

MS. WINTRODE: Madeline?

THE WITNESS: No. It would have been my contributions toward the design of it and the programming performed by Mr. James Bears.

Q. (By Mr. Powell) Is Mr. Bears a former employee of Prism?

A. Yes, he is.

Q. Does he reside in this area?

A. No, he doesn't.

Q. Where does he reside?

A. He resides in San Diego County, California.

Q. Okay. Do you work out of your home?

A. Yes.

Q. The compensation that you got for the license that you sold in 2004, how much was that?

A. Roughly -- I would say roughly it was 7,000. There is a contract to pay me 36,000. I've received roughly 7,000 of it.

Q. You said 35,000?

A. 36,000, approximately.

Q. Of which 7,000 has been paid?

A. Yes.

Q. Okay. And that's a contract with Noveon?

A. That's correct.

Q. When is the balance to be paid?

A. It's not actually time definite.

Q. Okay. Is this a written contract or a verbal

contract?
A. It's a written contract.
Q. Did you bring that document?
A. No, I've got to find it still. I have a digital copy of it and I can't access that hard drive that it's on. As soon as I'm able to do that, I will provide it to you.
Q. All right. Prior to receiving the $7,000 as the licensing payment, what other compensation have you received from Noveon since its conception?

TRAWICK COURT REPORTING

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A. None.
Q. I had asked you to bring some documents today in response a request -- a subpoena that was served on you. I would like to go down that list and see what you brought with you today.
A. Okay.
Q. The first item was bank statements on any bank account that you have in your name alone or joint with anybody else.
A. I brought the copies of those that I do have in my possession.
MS. WINTRODE: Now, are those copies?
THE WITNESS: Some of these are copies, some of these are originals. These are originals, these are copies.
MR. POWELL: Okay.
Q. (By Mr. Powell) Let me see those. Okay. You've handed me a copy of an account with Compass Bank. I

guess this is account number 0021294144. This is a joint account, you and your wife?
A. That's correct.
Q. And is this your personal home account?
A. That's my personal checking account, yes.
Q. Okay. Besides the account, this particular account with Compass Bank, what other bank accounts do you

have that you are either signatory on or have access to?
A. Just that one.
Q. Okay. Do you know when this account was opened?
A. Would have been mid-2003, I believe.
Q. Okay. These records seem to go back to about June of 2004.
A. They may not be in order, so they may be sort of mixed in.
Q. On the January 27 to February 23, '05 statement, there is a description here of a couple of deposits. Can you identify what those deposits represent?
A. No, not off hand by looking at them.
Q. What document would you need to look at to refresh your memory about that?
A. About a miscellaneous deposit?
Q. Do you keep your deposit slips?
A. I do have some of them.
Q. What source of income does your household have besides the Noveon income?
A. As far as pure income, we have some income

that comes in to my wife. I've been repaid for some loans I've made to Noveon and expenses I've been paid back for. Other than that, in terms of pure income, none.

Q. Okay.

MS. WINTRODE: Also, I just want to state for the record that we object to questions or any documentation that has to do with personal income or property of Madeline that's separate and not joint with Francis.

Q. (By Mr. Powell) Does -- what does Noveon owe you at this time?

A. Noveon owes me the balance of the licensing contract with them. It also owes me for several expense reports that I filed with the company.

Q. And these are expenses for the calendar year 2005?

A. There are probably some expenses that have not been paid back to me from earlier than that.

Q. As far back as 2003?

A. Possibly as far back as 2003, yes.

Q. Okay. And what would you estimate as the amount to be reimbursed to you?

A. I can't give an estimate at this time.

Q. Are we talking about over a $1,000 or less than $1,000?

A. I would say it would be, in any event, less than $20,000.

Q. Okay. And the expenses that you incurred in

connection with your services rendered on behalf of Noveon, did you incur those through credit cards?
A. Some of them may have been. Some of them may have been check, cash, credit cards.
Q. And if they were checks, would they have been written on this Compass Bank account you've handed me?
A. Most probably, yes.
Q. And if they were a credit card, what credit cards would you have charged those on?
A. I don't know, might have been one of several cards.
Q. Can you enlighten me as to which ones?
A. Well, I have a Mastercard that I may have used.
Q. Did you bring those statements with regards to --
A. No, I don't have any current statements from any of my credit cards. I don't keep statements.
Q. Did you bring the credit cards?
A. No.
Q. Can you identify the credit card numbers?
A. I could -- yeah.
Q. Okay. Give me the Mastercard.
A. If you gave me some time, I could give you a list of the numbers.

Q. You don't have that information with you today?

A. No.

Q. Did you attempt to gain that information after you were served this subpoena?

A. I actually did look for everything that I had in the file and everything that I had was itemized on your deposition subpoena, I brought with me today.

MS. WINTRODE: And I did direct my client to just find what he could and we would certainly cooperate with you to --

Q. (By Mr. Powell) Did you attempt to go online and download your Mastercard account, for example?

A. No, you have to, in most cases from my experience, you have to call and they will send you copies of statements.

Q. Okay. The Mastercard you referenced, who was that issued by?

A. One of them would have been City Bank, City Bank Mastercard.

Q. Is that in your name alone?

A. Yes.

Q. And you got another Mastercard besides City Bank?

A. Yeah, I have a Household Bank credit card.

Q. And what other credit cards do you hold?

A. Those, I believe, would be the two that would have been used related to expenses.

Q. Do you have any other credit cards that you have access to?

A. Singly or jointly?

Q. Either way.

A. Several.

Q. Okay. Tell me which ones.

A. There's a Fleet credit card.

Q. Is that joint or --

A. I believe that's joint. There also is an American Express card.

Q. Is that you alone or joint?

A. I have used -- I don't know if there's any outstanding expenses on that card because I stopped using that card probably in late 2003, early 2004.

Q. Anything else?

A. Not that I'm aware of right now. There was one other one, yeah. There is another one. It's a -- there are two City Bank Mastercards, so there's a second one.

Q. Do you have a Bank of America card?

A. My wife has a Bank of America card.

Q. Identify for me who your current creditors

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are besides Mr. Stanly. Who do you owe money to?

A. Well, I have loans I have taken out from family.

Q. Can you identify those, please?

A. Taken out a loan from my father.

Q. And his name is?

A. Frederick Lopez.

Q. Where does he reside?

A. Fort Worth, Texas.
Q. How much do you owe him?
A. Roughly -- I'd say roughly 20,000.
Q. And is that documented in the form of a promissory note?
A. No.
Q. When was that loan taken out?
A. There were several. There were several loans taken out over time as I needed money.
Q. When's the most recent time you borrowed money?
A. Most recent would have been about three weeks ago.
Q. How much did you borrow then?
A. 4,000.
Q. What did you use the money for?
A. Various expenses. Legal bills primarily.

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Q. Okay.
MR. STANLY: Mr. Lopez, please speak up.
Q. (By Mr. Powell) Besides your loan from your father, who else do you owe money to? What other loans have you taken out?
A. Money on credit cards. I owe -- I've got a loan I've taken out from my brother.
Q. And your brother's name is?
A. Mike.
Q. Where is Mike located?
A. He lives in Portola Valley, California.

Q. How much do you owe him?
A. Roughly 1700.
Q. How much to you think you owe on the credit cards, cumulatively?
A. I would say somewhere in the neighbor of 60,000.
Q. What other debts do you have besides that, in addition to Mr. Stanly, in addition to your home mortgage?
A. That's all I can think of right now.
Q. Okay. Are you a member of --
A. Credit card debt and -- yes, that's all I can think of right now.
Q. Okay. Are you a member of Kelly Plantation

Golf Club?
A. No, I am not. Sounds good though.
Q. Are you a golfer?
A. Yeah.
Q. Do you have golf clubs?
A. Yes.
Q. What kind?
A. Would it make a difference to you?
Q. Sure.
A. I've got a set of Cleveland clubs.
Q. When did you purchase those?
A. Somewhere around five years ago.
Q. What kind of records do you maintain on your production with Noveon?
A. Will you be more explicit?

Q. You're in sales, correct?
A. Yes.
Q. Do you keep a records of what kind of sales you produce on a monthly basis?
A. Yes.
Q. What is your estimate of the sales value you've produced in 2005 for this company?
MS. WINTRODE: I object to that.
THE WITNESS: Without looking at it, I don't think I can provide you with an accurate

estimate.
Q. (By Mr. Powell) Give me an idea of what we're talking about. Are we talking about over $500,000?
A. For this year?
Q. Yes, sir.
A. No way.
Q. Over 100,000?
A. I doubt it.
Q. Okay. What about 2004?
A. I couldn't really give you an estimate without looking at it.
Q. Okay. Did you at one time last year have a Countrywide mortgage?
A. Yes.
Q. On what property?
A. On the property at Sand Myrtle that we discussed.
Q. Is that -- was that your original mortgage

holder?
A. Yes, sir.
Q. What is your current mortgage payment?
A. It's in the neighborhood of $4,000.
Q. When you refinanced this property last November after paying off 600,000 to Wells Fargo, you had approximately $150,000 between that and the new mortgage,

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what did you do with that money?
A. I believe the vast majority went to pay legal bills and consumer debt. Also paid pay back some loans that we had from family members.
Q. What would you have to look at to itemize or account for that $150,000?
A. What would I have to look at to --
Q. Uh-huh. Would you have a computer program that would show where that money went or did you deposit it all into your Compass Bank account or did you pay it out by check? What did you do with the money?
A. I would have to check. If I was going to do that, I would have to look at my own records and my wife's records.
Q. All right, sir. Where besides this Compass Bank account would that money have been deposited or could that money have been deposited?
THE WITNESS: Can you excuse me for a minute?
(Brief break taken.)
THE WITNESS: Could you repeat the question for me?
(Question read back.)

THE WITNESS: There may have been money paid out of escrow. I believe there were funds paid out of escrow. Also funds may have been -- some of

those funds may have been deposited in my wife's account.

Q. (By Mr. Powell) Okay. In your wife's account at what bank?

A. She has an account at SunTrust Bank.

Q. Do you know that account number?

A. No, I do not.

Q. Where else?

A. That's all I can think of.

Q. Okay. Who conducted the real estate closing on this refinance?

A. That would have been Lamar Conerly's office.

Q. Is it safe to say that if there is no deposit into Compass Bank corresponding with the closing on this refinance, that the funds were either paid out of escrow as directed by you and your wife or deposited into your wife's SunTrust account?

A. I believe so. I can't think of anything else.

Q. All right.

A. I think the vast majority of it went directly out of escrow.

Q. You mentioned legal bills, in connection with what legal matters?

A. Well, I have the legal matter that you're involved in, which is Union Bank of California versus me and versus Mr. Stanly.

Q. Who are you represented by in that lawsuit?

A. Joseph Fischbach of Fischbach & Fischbach, and that's spelled F-i-s-c-h-b-a-c-h.

Q. Now, that was a matter that was initiated in 2003; is that correct?

A. That's correct. There's also another legal matter in San Diego Superior Court, Lopez versus Stanly.

Q. Now, is this an action that you initiated?

A. Yes, it is.

Q. Okay. And what's the nature of that action?

A. It's basically a suit involving invasion of privacy, breach of fiduciary duty.

Q. Who is the attorney representing you in that matter?

A. Same attorney, Mr. Fischbach.

Q. And in November of last year when you closed on this refinance, what would you estimate were your unpaid legal fees at that time?

A. I would say in the neighborhood of somewhere between 25 and 60,000.

Q. Okay. Any other legal matters pending other

than the two you mentioned and this collection action?

A. No. There is a criminal matter of The People of California versus Stanly and there may have been some activity by my attorney on that matter.
Q. Anything else?
A. Not that I can think of, no.
Q. Looks like your deposits each month averaged about $6,000; does that sound about right?
A. That could be right. I haven't actually done an average or anything like that.
Q. Okay. I see a deposit here June of '04, June the 21st, for $15,000.
A. Yes, that was a -- I do remember that. That was a loan that I got.
Q. From whom?
A. From a friend of mine.
Q. What is that friend's name?
A. Friend's name is Wayne Wise.
Q. Where does Wayne Wise live?
A. Nashville, Tennessee.
Q. Is that debt still outstanding?
A. Yes.
Q. Okay. Now, are these copies for me or do I need to make copies?
A. Those, you can have.

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Q. All right. Do you have any canceled checks on this Compass Bank account?
A. No, I don't.
Q. Do you have any savings or credit union

accounts in your name?

A. No, I do not.

Q. That was item 2 on the list. Let's just continue on down the list. Item number 3, any certificates of deposit with any financial institution.

A. No.

Q. When I say you, I'm referring to you individually or jointly with anybody else.

A. Correct.

Q. What about any IRAs or KEOUGHs or any other type of retirement plan?

A. Yes, I have IRA accounts.

Q. Did you bring your documentation on that?

A. Yes, I did.

Q. May I see that?

A. (Witness complies.)

Q. The simple IRA, which employer set that up for your benefit?

A. Well, there's actually two of them. The --

Q. The Smith Barney.

A. Smith Barney was originally set up by the

simple IRA through Prism Advance Technologies.

Q. Okay. And you mentioned another one.

A. Yes. There was one in California and I closed the one in California and opened up the one in Florida. It's the same money.

Q. It's the same what?

A. It's the same funds.

Q. Okay.

A. As a Florida resident, I can't have an account in California, so they made me transfer it.
Q. It looks like the most recent statement you have is October of 2004. Have you not received any statements since then?
A. I copied everything I did have. They may not be in order, so I don't know if there's something more recent than that. I don't know if you've been through them all
Q. Yes, I have. I don't see anything. Is the account still open?
A. Yes.
Q. Have you received any statements for 2005?
A. I am sure I have.
Q. If you would, then, try to locate those and produce those to your attorney, I would appreciate it.
A. Sure.

Q. What about your tax returns for the last three calendar years, which is item 5 on the list?
A. Okay. I am going to need copies of these.
Q. All right.
A. Okay.
Q. Have you filed for 2004?
A. No, I have not. I filed an extension.
Q. Until August?
A. Yes. I filed an extension, whatever that customary period is. An extension was filed in April.
Q. Okay. On your 2002 return you listed the

sale of some stock, 100 shares of KMX. Do you still own any stock in KMX?

A. No, I do not.

Q. And you reflected interest income with the Bank of Puerto Rico.

A. Yes.

Q. Do you still have an account there?

A. No, I do not.

Q. When was that account closed?

A. It would have been closed -- if there's a date on there, it would have been closed by that date. Is there a date listed on there?

Q. No. When did you open that account?

A. It was actually a -- similar to a CD, and it

was something that I did with some cash, my brokerage account fund.

Q. Do you recall when you opened that account?

A. No, I don't. I don't believe I had that account for more than a year.

Q. How much did you originally deposit in the Bank of Puerto Rico?

A. I don't recall. It wasn't a large amount.

Q. Okay. On your 2003 return you show some long-term capital losses, it looks like. Do have any of those stocks, shares any of those stocks that are listed on that return?

A. At the present time, do I have any shares?

Q. Yes, sir.

A. No.

Q. Do you own any stock at all at this time?

A. No.

Q. What about Prism?

A. I thought you meant publicly traded stock.

Q. No, I didn't say that. I just said stocks.

A. I have a share certificate from Prism, which is a defunct corporation. I imagine the value of that is zero.

Q. How many shares does that certificate

represent, if you recall?

A. I don't recall. It's either 1,000 or 5,000 shares.

Q. Any other stock?

A. I've got shares in a company called F2 Systems, actually F2 Systems Technology. Also not publicly traded.

Q. How many shares do you own in that company?

A. I have it here somewhere.

Q. Okay. Is that still a viable company?

A. It hasn't done anything in operations or anything like that.

Q. Do you know any of the other shareholders of that company?

A. The other share holder of that company is Frederick Lopez.

Q. Do you know what percentage of ownership you have?

A. Fifty percent.
Q. And your father has the other fifty percent?
A. Yes. For all intents and purposes, that's a dormant corporation.
Q. Does it have any assets?
A. No.

Q. Any other closed corporation besides Prism and F2?
A. There's a limited liability company called Cambria Holdings, LLC, which I own fifty percent of.
Q. And who are the other members of that company?
A. The other owner is Mr. Stanly.
Q. Does that LLC own any assets that you're aware of?
A. Not that I'm aware of, no.
Q. The 2003 return also reflects some long-term capital gains in -- well, two different sales, I guess. SCRI.
A. Yes.
Q. What does that stand for?
A. It stands for Sea Corp.
Q. Own any stock in that corporation at this time?
A. No, I do not.
Q. What about item 6, have you filed any tangible personal property tax returns in the last three calendar years?

A. Not that I'm aware of.
Q. Have you given any financial statements to any financial institution in the last three years?

A. Not that I have, may have, but I don't have any copies of any financial statements.
Q. The Aurora loan that you took in November of 2004.
A. Yes.
Q. Do they have a local office here?
A. Not that I'm aware of.
Q. Did you bring any documentation related to that particular transaction?
A. Did I bring any, no. I think -- I may have brought a copy of something. I did bring some documents related to real estate transactions, but I can show you when we get there.
Q. Okay. Typically at closing your closing agent provides you with a copy of the documents that you execute. Did you receive anything in connection with the Aurora loan?
A. I'm sure I would have.
Q. Is there any reason you didn't bring them here today?
A. I didn't say I didn't. I said I brought some real estate documents. I was just waiting until we got there.
Q. Well, do you recall that you had to file a financial statement with Aurora?

A. I don't recall.
Q. Let's just jump ahead then to the real estate transaction documents that you brought.
MS. WINTRODE: Do you mind if we take a five-minute break?
(Break taken.)
Q. (By Mr. Powell) Mr. Lopez, the July 15th, 2003 real estate purchase on your current homestead residence, you were required to bring in approximately $98,000 at closing. What was the source of those funds?
A. Can I see it?
Q. Sure.
A. We had a house we sold in Carlsbad, California.
Q. Okay. And did you sell that for approximately $700,000?
A. Yes.
Q. And I guess you paid off the Countrywide home loan mortgage; is that correct?
A. Sounds correct.
Q. And it looks like from the closing statement that you brought here today that there was approximately $140,000 between the purchase, sales price and the half of the mortgage of the home.
A. Yes.

Q. What did you do with that money after you paid all the closing costs and stuff like that?

A. I couldn't tell you with any specificity, but I believe we paid bills, paid legal fees. Also there was a company that I co-owned with Mr. Stanly that I paid a lot of expenses for.

Q. Okay. Does -- do you claim that Prism owes you any money?

A. Yes.

Q. How much do they owe you?

A. Well, I believe it was discharged in the bankruptcy.

Q. Prism filed for bankruptcy?

A. Yes.

Q. How much do you claim that they owed you that was discharged?

A. In the neighborhood of 120,000.

Q. And what did that represent?

A. Wages, expenses. There was also money the company was holding for its -- contributions that I made into an IRA that I never got.

Q. Have you filed in the California case, any of the California cases, documents that relate to assets you claim you own, such as software programs?

A. Not to my knowledge. In terms of a dollar

value or anything like that?

Q. No, just listing and describing the software itself.

A. Not in the form type of form. I have

possibly through declarations, legal documents, motions, things like that.

Q. Would you mind getting with your California attorney and see if you have actually filed a document that describes the software that you claim that you own that's an asset of yours?

A. Sure.

Q. Are you aware of any financial statement that you've filed in any of those California cases?

A. Not to my knowledge, no. I know I filed a document in the bankruptcy court listing what the company owed me.

Q. And these documents that relate to real estate transactions, are these copies or do I need to make copies?

A. Those are originals.

Q. Okay. All right, sir. I'll put these here and make copies.

A. That includes this.

Q. In those documents that relate to Cambria Holdings, is this a transaction where Cambria Holdings

acquired a real estate parcel?

A. Those particular documents you're looking at relate to, I believe, some of those may relate to the acquisition of the property and some of those may relate to the subsequent sale of the property.

Q. All right. I suspect that your refinance that you did through your attorney's office, that your lender required you to do a loan application slash financial statement and since I would suspect that Lamar Conerly's office has retained records regarding that --

A. Yes.

Q. -- I would like for you to try to get that financial statement slash loan application.

MR. POWELL: Is that going to be a problem or do you --

MS. WINTRODE: I don't think it will be a problem. Obviously, anything that was personal to Madeline, we wouldn't produce.

MR. POWELL: I suspect it was a joint application.

MS. WINTRODE: Right.

Q. (By Mr. Powell) Do you own any other real property besides your marital residence?

A. No.

Q. Do you have any agreements for deed or

contracts to purchase any real property at this time?

A. No.

Q. Besides the LLCs that we've mentioned so far in this deposition, are you a member of any other LLCs?

A. No.

Q. Item number 10, credit card statements. I believe it's your testimony you don't have any in your possession; is that correct?

A. I do not.

Q. Now, these credit cards that you've listed, have you -- were you using any of these credit cards when

you were employed with Prism?
A. Possibly, yes.
Q. Were you furnished any others besides those when you were with Prism that you used?
A. Was I furnished with -- what do you mean?
Q. Were you furnished any credit cards by Prism for use?
A. No, I wasn't provided any credit cards by Prism.
Q. All right. Stocks certificates, I believe you said you brought the stock certificate here today.
A. Yes, let me dig through this. There's a whole pile here related to Cambria Holdings and the stock certificate for that is included in the file, and that's my

only copy as well.
Q. Okay. I'll make a copy of that.
A. There's also a reference to the number of shares I have in F2 Systems Technology, Inc., 1000 shares, but a copy of the certificate is not in here for some reason, but the reference is there.
Q. Okay. And again, what is the status of F2 Systems Technology, Inc.
A. Not in operation.
Q. And you're not aware of it having any assets?
A. No.
Q. Okay. What other documentation have you brought here today?
A. Well, I have the insurance documents that you requested.

Q. Can I see those?
A. Yep. There's one of them. That's my only copy.
Q. All right. Does your monthly mortgage payment include taxes and insurance?
A. Yes. Here's another insurance document, title to a car.
Q. All right. Can I see that?
A. (Witness complies.)
Q. All right. You handed me copy of the

certificate of title on a 1997 Ford. Is this the only vehicle that you have access to?
A. That's the only vehicle that I own.
Q. Do you have access to another vehicle?
A. Yes.
Q. What vehicle is that?
A. That's a Chevrolet Suburban.
Q. What year?
A. 2005.
Q. Is that titled in your wife's name?
A. Yes, it is.
Q. Is it paid for?
A. Nope.
Q. And are you on that indebtedness?
A. No.
Q. The 1997 Ford, is it paid for?
A. Yes.
Q. What kind of condition is it in?

A. Probably below average.
Q. Mileage?
A. Roughly 70,000, give or take 5,000.
Q. All right. Other than the corporations that we've addressed today so far, are there any other corporations that you're either an officer, director or --
A. That are active?

Q. Active or if they have assets, even if they're dormant.
A. No. There is some that inactive. We have listed them.
Q. We've already discussed all the inactive ones?
A. We've discussed the active ones or have assets.
Q. What about the inactive ones? What are you talking about?
A. The corporation I own called Prism Freight Services. I think I mentioned that before. I mentioned Metro Consolidation Carriers, those are both inactive with no assets.
Q. Other than what's been reflected on your tax returns for 2002 and 2003 that you produced today, do you have any other records that reflect income received by you in 2003, 2004 or 2005?
A. It depends on your definition of income, but no, I don't have any other records of income as I understand the meaning of income.
Q. And what is your definition of income that

you're using to respond to these questions?
A. Income that I'm using is payment for services rendered. Under that definition, no.

Q. Okay. What about passive income as opposed to active income using your definition?
A. Well, the only other thing that I might have documentation of would be, for example, reimbursement for expenses. That I don't have with me, but I could get that to you.
Q. Are you involved in any partnerships as opposed to a corporation or a LLC?
A. You mean partnerships under the legal interpretation of legal partnership?
Q. Yes.
A. No.
Q. Are you involved in any joint ventures?
A. No.
Q. Any syndications?
A. No.
Q. Do you operate any sole proprietorships?
A. No.
Q. Any other LLCs that you're a member of besides what we talked about to this point?
A. No.
Q. Did you at one time own a Mercedes?
A. Yes.
Q. When did you dispose of that vehicle?
A. Would have been sometime in, I would say the

last quarter of 2004.
Q. And did you sell that vehicle?
A. Yes.
Q. To whom?
A. To the Chevrolet dealer here in Florida.
Q. What was the year of that Mercedes?
A. 2003.
Q. What model?
A. E500.
Q. How much did you sell it for?
A. What I owed on it.
Q. Did you trade it in on another vehicle?
A. Yes.
Q. Which vehicle?
A. Really it was a trade-in for what I owed on it, and my wife purchased a new vehicle.
Q. The Suburban?
A. Yes.
Q. Was the 2003 Mercedes titled in your name alone?
A. Yes.
Q. Which Chevy dealership?
A. The dealership called Sandy Sansing.
Q. In Pensacola?
A. Yes.

Q. How much did you owe on the 2003 Mercedes at

the time you made this trade?
A. I can give you a ballpark figure.
Q. Okay.
A. Ballpark was 43,000.
Q. Was that vehicle -- when did you acquire the Mercedes?
A. Would have been in late 2002.
Q. Do you recall what the purchase price was?
A. I have a rough approximate, somewhere in the neighborhood of 60,000.
Q. And after you traded in your vehicle for the Suburban, how much was owed on the Suburban?
A. I don't know for a fact.
Q. What's your best estimate?
A. I have no idea.
Q. Now, I would like to review the documentation on that transaction. We can do it voluntarily if you want to produce that or I can subpoena those records from your wife. I just need to verify that you, in fact, didn't get a credit on that purchase.
A. Okay.
MR. POWELL: Do y'all want to produce that voluntarily or do you want me to go through the formal request?

MS. WINTRODE: We can talk about that and let you know.
Q. (By Mr. Powell) Do you own an interest in a boat?

A. No.
Q. Airplane?
A. No.
Q. Do you have any life insurance policies on your life?
A. Yes.
Q. Did you bring your documentation on that?
A. Actually I looked for it, but I couldn't find it. I can tell you what it is.
Q. Please do.
A. It's a term policy with Valley Forge Life and it's for 500,000.
Q. What is the annual premium, or is it paid monthly?
A. It's 400 -- somewhere around 450 and 500 per year.
Q. Okay. What is your date of birth?
A. 7/7/61.
Q. Are there any other outstanding judgments that have been entered against you other than the one in the Union Bank of California?

A. That's the only one I'm aware of.
Q. Do you receive any royalties on any assets?
A. No.
Q. The last item on this list is documentation regarding any intellectual property that you currently own or owned in the last three years. What did you bring in regards to that?
A. Well, I think we discussed that. I have --

there is a license agreement.
Q. Did you bring that?
A. I did not bring that, but I told you that I would get a -- make that available to you.
Q. Okay.
A. And we also discussed that I might have listed my intellectual property in the legal case in California, which I would discuss with my attorney and see if he had anything like that.
Q. Other than a licensing agreement with your present employer and whatever documentation that your attorney in California may have, are you aware of any other documentation that would exist regarding intellectual property that you claim ownership in?
A. There is a -- there's documentation in the legal case, there is documentation for my purchase of assets of Metro Consolidation that I don't have with me.

Again, that's on digital format, I can produce that for you.
Q. All right.
A. Then other than what's in the legal papers, I'm not aware of any.
Q. Do you have any objection to your California attorney producing to me the -- any copies of any intellectual property documentation that he has in his possession?
A. I would have to discuss that with my attorney to see if he has an objection. I don't.

Q. Okay. Now, with regards to personal property, what personal property do you own, generally speaking? Do you have jewelry?
A. I've sold -- I've got a wedding band. No, I don't have any jewelry of any significant value.
Q. Do you have any Rolex watches?
A. No.
Q. Have you owned any Rolex watches?
A. Yes.
Q. How many?
A. I had two.
Q. Where are they?
A. I sold them.
Q. When?

A. Both of those were sold in 2004.
Q. To whom?
A. One was sold to my attorney.
Q. Which attorney?
A. Mr. Fischbach.
Q. Okay. And how much credit did he give you for the Rolex watch?
A. 2500.
Q. What about the second Rolex?
A. I sold the second one to a watch dealer.
Q. Who was that?
A. I don't recall.
Q. Here in Okaloosa County, Florida?
A. No, they were -- I had to ship the watch somewhere.

Q. When did do you that?
A. That was in 2004 sometime.
Q. Do you have any documentation on that sale?
A. I think I do.
Q. If you would produce that to your attorney.
I want to show you a document that I'm going to make as an exhibit to this deposition and ask you if you recognize this listing of personal property as being a copy of a list that you prepared for --
MS. WINTRODE: And just for the record, we

object to this document because it's my client's intention that your client illegally hacked into his personal computer to get this document. So I understand that you're going to question him about it, but I just wanted to state that for the record.
MR. POWELL: Well, that's noted for the record.
Q. (By Mr. Powell) Do you recognize that document?
A. I made a document like this that was on my personal computer in Carlsbad, California, and I know that Mr. Stanly showed up with a document like this previously in a deposition that he took from my computer. He took several items from my computer.
Q. All right. Do you recall when you prepared that, the original of that listing?
A. The original of this listing would have been

sometime around the year 2000. I did prepare a document like this in and around 2000.

Q. Okay. All right. We'll just mark this as Exhibit A to your deposition.

With regards to the -- let me just hand you this exhibit, so I can ask you about a few things and see if you still possess them. Under the jewelry, are there

any items under that category that are still in your possession?

(Exhibit A was marked for identification.)

MS. WINTRODE: And you're just asking about his items, not gifts he made to his wife?

MR. POWELL: Well, he can identify those, if that's what it is.

THE WITNESS: I'll identify anything that pertained to me as far as things that I recognize that I have. I have a wedding band.

Q. (By Mr. Powell) All right. And that's the one described as an 18 carat heavy band, fourth item down -- fifth item down?

A. No, I think that would pertain to yellow gold, but I'm not sure.

Q. So you think it's item number 2?

A. I would think, yeah.

Q. Okay. Do you claim an interest in number 1?

A. No.

Q. Number 3?

A. Nope.

Q. Number 5?

A. No.

Q. And as far as the items after the Rolex watch

that's listed there, how about any of those items?

A. No, I don't own any bracelets or necklaces.

Q. To your knowledge, are these items that belong to your wife?

A. Assuming that -- if this is correct, I recognize some of the items here.

Q. All right. What about under the furniture, under the subtitle of living room, do you still possess any of those items?

A. Personally?

Q. Personally or --

MS. WINTRODE: If they're joint household items.

THE WITNESS: Yes.

Q. (By Mr. Powell) Which ones?

A. This entertainment center. We have two coffee tables.

Q. I'm sorry?

A. We have two coffee tables. There's two coffee tables listed.

Q. All right.

A. We have a dining room set.

Q. Does that appear to be the dining room set that you have now, still have?

A. Yes, we have a maple dining set. We don't

have a rosewood unit.
Q. Are you referring to the wall unit?
A. Yes.
Q. Okay. What about any of the office items?
A. None of those.
Q. Were those relocated to the state of Florida?
A. Which ones?
Q. The office items.
A. Office items, no.
Q. What about the master bedroom?
A. Well, we do have a mahogany master bedroom set in our house.
Q. Those three items listed there appear to describe to you --
A. Appear to, yeah. I don't agree with the values, but we're not talking about the values.
Q. What about the rugs?
A. I can't say for certain.
Q. Do you own a Persian rug?
A. Yes.
Q. That's not actually described on this.
A. I don't see it on there, no.
Q. Where did you acquire the Persian rug?
A. Somewhere in San Diego.

Q. Was it purchased by Prism?

A. No.

Q. This was a rug in your office at Prism?

A. Yes.

Q. When did you purchase that?

A. In -- if I had to guess, I would say sometime in 2002.

Q. Okay. Was that purchased with a credit card?

A. Yes.

Q. And did Prism reimburse you for that?

A. Only partially I believe.

Q. What size rug is that?

A. It's probably ten-by-fourteen or something like that.

Q. On the second page, the suit of Japanese armor, do you still have that?

A. No.

Q. When did you dispose of that?

A. I had a suit of armor that I sold in 2003.

Q. Here in Florida?

A. No.

Q. Who did you sell it to?

A. I think it was a -- I'm not sure. I think it was a dealer.

Q. Do you have --

A. Paid me cash for it.

Q. Do you have any documentation on that sale?

A. No.

Q. How much did you sell it for?
A. $1500.
Q. Have any other items under the category of artwork and collectibles that are located in your home or still in your possession somewhere else?
A. There's some. I've sold a vast majority of this. My wife --
Q. Identify what you know you still have.
A. My wife owns some prints from her cousin. Those are on here.
Q. Where are those listed?
A. It says prints, two of them. She owns those. I still have a -- I have one of these vases.
Q. Which one?
A. The maple scene. There's a maple scene vase.
Q. Okay.
A. That's all I recognize that we have.
Q. Under the electronics and musical instruments, any of those items?
A. I know the Roland Drums are gone.
Q. When did you sell those?

A. I sold those in -- it was either 2003 or 2004, I don't remember.
Q. Okay. To whom?
A. I sold those on Ebay. I don't remember the guy's name.
Q. Okay. How much did you sell them for?
A. Somewhere between 2,000 and $4,000.
Q. Okay. Any other items listed under that

category that you recognize still to be in your possession?

A. Yes, we have a TV.

Q. Which one on there?

A. We have a 36-inch TV and we have a 32-inch TV. They're both pretty old.

Q. Anything else?

A. My wife owns a Nikon camera.

Q. All right.

A. And we have a digital camera. I don't know if it's -- I don't recognize either one of those. We do have one.

Q. Computers, either of those computers?

A. No.

Q. Do you have -- do you own a computer yourself?

A. Yes, I do.

Q. What kind of computer do you have?

A. I have a Compaq.

Q. Laptop?

A. No, it's a tower.

Q. Workstation?

A. Uh-huh.

Q. How old is it?

A. Probably three years old, in that neighborhood.

THE WITNESS: Can I take a bathroom break?

MR. POWELL: Okay.

THE WITNESS: Two minutes.
(Break taken.)
Q. (By Mr. Powell) Just a few more questions and I think we'll be through. Mr. Lopez, do have any retainers posted with any attorneys that have not been consumed at this point?
A. Not to my knowledge.
Q. Do you have any medical debts?
A. Yes.
Q. To whom?
A. There are probably several of them. One of might be Fort Walton Beach Medical Center.
Q. All right. Approximately how much?
A. I don't know.

Q. All right.
A. There's an ER doctor firm. I don't remember the name specifically. I have an outstanding debt to them, and there are a couple of others that I can't recall the names of them.
Q. Okay. Are all these medical debts related to your personal health care?
A. The ones I'm referring to are, yes.
Q. Okay. I believe that when you were at Prism you had in your office a Sleigh brand desk and credenza; is that correct?
A. Yes.
Q. Where are those items of furniture?
A. I have a desk in my house.

Q. And that was the desk that you had --
A. Yes.
Q. -- in California?
A. Yes.
Q. Did you have the credenza also?
A. Yes.
Q. Have you ever had an IBM laptop?
A. Yes, I have owned several IBM laptops.
Q. Do you own any at this time?
A. No.
Q. Do you have an Epson projector?

A. No.
Q. Did you have one at one time?
A. Not that I recall.
Q. What about a Toshiba scanner, do you have one of those?
A. Not that I'm aware of.
Q. Do you have a 19-inch, flat-panel monitor?
A. Nope.
Q. Did you at one time?
A. I used to at one time, yes.
Q. What happened to it?
A. I think I sold it.
Q. Okay. When?
A. Would have been late 2003. Could have been 2004.
Q. Okay. Do you recall to whom you sold it?
A. No.
Q. Do you have any frequent flyers miles built

up?
A. I think I do, yeah.
Q. With what airline?
A. I think I have some with Delta.
Q. Do you have any AMD stock?
A. No.
Q. Do you have any causes of action that you own

against other persons other than Mr. Stanly?
A. Well, causes of action, do you mean by that potential causes of action or --
Q. Yes, where you could sue somebody for monetary damages.
A. No, I would say just the one with Mr. Stanly.
Q. Do you own any firearms?
A. Yes.
Q. What kind of firearms do you own?
A. I have a -- I have a Smith & Wesson.
Q. What caliber?
A. 40.
Q. Is that it?
A. That's it.
Q. Do you have a 3080 automatic Walter gun?
A. No, I do not.
Q. Did you ever have one?
A. Yes.
Q. What did you do with it?
A. Threw it away.

Q. No other revolvers?

A. No.

Q. The watch that you are currently wearing, what brand is that?

A. It is a Claude Pascow.

Q. What about cell phone, do you have a cell phone?

A. Uh-huh.

Q. How many?

A. I own one cell phone.

Q. What kind do you own?

A. Motorola.

Q. Is it one of the new generations where you can take photographs or anything like that?

A. It's the one they give you for free if you sign up.

Q. Okay. Do you have any type of collections, stamps, coins, anything like that?

A. No.

Q. Other than what we have talked about so far, do you own any other assets that individually would exceed $1,000?

A. No.

MR. POWELL: Okay. I think I am about through. Let me just confer with my client just a second.

THE WITNESS: There were some other documents I think.

MR. POWELL: Yes.

THE WITNESS: Oh, you already have them.
MR. POWELL: Yes, she gave them to me.
MS. WINTRODE: I gave them to him.
THE WITNESS: I didn't want you to have all of them.
MS. WINTRODE: I'm sorry, I thought they were produced -- weren't they produced --
THE WITNESS: That's all right.
(Break taken.)
Q. (By Mr. Powell) With regards to office equipment. Do you have scanner of any type?
A. Yes.
Q. What kind of scanner do you have?
A. I have a Cannon scanner.
Q. What kind of monitor are you using for your current computer?
A. I have a -- I think it's an ADC.
Q. What size?
A. I'm not positive about this, but I think it's an 18-inch.
Q. Flat screen?
A. Uh-huh.
Q. That's a yes?
A. Yes.
Q. Do you have a fax machine?

A. Yes.
Q. What kind?
A. Panasonic. I believe it's a Panasonic. I'm not 100 percent.
Q. Okay. Do you have a laser printer?
A. I have a laser jet printer.
Q. What brand?
A. It's an Epson.
Q. I think at one time you had a Japanese ink print or painting on your wall in your office, do you still have that?
A. I don't know what you're referring to.
Q. Do you not -- in your office in California, you don't remember having a framed painting of any type?
A. No. I had a framed map of the world, that I remember.
Q. What about an atomic clock?
A. No, I don't have one. There used to be one in my office several years ago. I don't know what happened to it.
Q. Okay. Do you have any joint debt with your wife other than the home mortgage?
A. Yes, there's probably some joint credit card debt.
Q. And what credit cards would those be?

A. I believe the Fleet Card that I told you about, that's probably a joint card.
Q. Okay.
A. That's all I can think of right now.

Q. Did you have more than one suit of armor?
A. No.
Q. Did you have any swords?
A. No. I wish.
MR. POWELL: All right. I don't have any further questions. If I have this transcribed, you have a right to read and sign the deposition. You can't change anything that she puts in the transcript. There will be an errata sheet that you could make a notation, suppose she spells a name wrong or something like that.
THE WITNESS: Right.
MR. POWELL: Do you want to exercise that right if I have this transcribed or do you want to --
THE WITNESS: Absolutely.
MR. POWELL: All right. No more questions.
MS. WINTRODE: I don't have any.
MR. POWELL: All right. Thank you, sir.
(Deposition was concluded at 4:10 p.m.)
CERTIFICATE OF OATH

STATE OF FLORIDA)
COUNTY OF OKALOOSA)

I, Wanda M. Pearcey, hereby certify that FRANCIS J. LOPEZ personally appeared before me and was duly sworn.

Witness my hand and official seal this 1st day of June, 2005.

Wanda M. Pearcey,
Notary Public
State of Florida

CERTIFICATE OF REPORTER

STATE OF FLORIDA)
COUNTY OF OKALOOSA)

I, Wanda M. Pearcey, Court Reporter, certify that I was authorized to and did stenographically report the foregoing deposition; and that the transcript is a true record of the testimony given by the witness; that the witness did not waive reading and signing.

I further certify that I am not a relative, employee, attorney, or counsel of any of the parties, nor am I a relative or employee of any of the parties' attorneys or counsel connected with the action, nor am I financially interested in this action.

Wanda M. Pearcey
Court Reporter

DOCKET NUMBER 68-4

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Leslie F. Keehn (SBN 199153)
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UNITED STATES BANKRUPTCY COURT

SOUTHERN DISTRICT OF CALIFORNIA

In Re: FRANCIS J. LOPEZ, Alleged Debtor	Case No. 05-05926-PBINV Involuntary Chapter 7 **DECLARATION OF CYNTHIA K. LAY IN OPPOSITION TO ALLEGED DEBTOR'S MOTION FOR SUMMARY JUDGMENT AND ORDER DISMISSING INVOLUNTARY PETITION** Date: June 26, 2006 Time: 2:00 p.m. Judge: Hon. Peter W. Bowie Ctrm: 4

I, Cynthia K. Lay, declare as follows:

1. I am a paralegal with the firm of Robbins & Keehn, APC, the attorneys of record for Petitioning Creditor Alan Stanly ("Stanly"). I make the following declaration based upon facts within my first hand knowledge, acquired during the performance of activities that were within the course and scope of the firm's engagement on behalf of Stanly.

2. On or about September 28, 2005, I was asked to prepare a "Subpoena in a Case Under the Bankruptcy Code" for each of the following entities: Kelly Plantation Owners Association; Ft. Walton Beach Medical Center; Allstate Floridian; Northwest Florida Daily News; Okaloosa Gas District; Coastal Community Insurance; Progressive Insurance; American Express;

Chevron Texaco; American Home Shield; Valley Forge Life Insurance; and Wayne Wise (the "Group One Entities").

3. I was also asked to prepare a "Notice of Subpoena in a Case Under the Bankruptcy Code" for each of the Subpoenas prepared for the Group One Entities.

4. I followed those instructions, and on or about October 4, 2005, I caused to be served a "Notice of Subpoena in a Case Under the Bankruptcy Code" for each of the Subpoenas prepared for the Group One Entities on M. Jonathan Hayes. The "Proof of Service" for such service is attached hereto as Exhibit "A" and incorporated herein by reference.

5. On or about December 22, 2005, I was asked to prepare a "Subpoena in a Case Under the Bankruptcy Code" for each of the following entities: Aurora Loan Services, a Lehman Brothers Company; Compass Bank; Citi Cards; Bank of America; HSBC Card Services; Progressive Auto Pro Insurance Company; Progressive American Insurance Company; Progressive Express Insurance Company; Progressive Bayside Insurance Company; Progressive Consumers Insurance Company; Progressive Southeastern Insurance Company; and Progressive Casualty Insurance Company (the "Group Two Entities").

6. I was also asked to prepare a "Notice of Subpoena in a Case Under the Bankruptcy Code" for each of the Subpoenas prepared for the Group Two Entities.

7. I followed those instructions, and on or about December 30, 2005, I caused to be served a "Notice of Subpoena in a Case Under the Bankruptcy Code" for each of the Subpoenas prepared for the Group Two Entities on M. Jonathan Hayes. The "Proof of Service" for such service is attached hereto as Exhibit "B" and incorporated herein by reference.

8. I have first-hand knowledge of all of the foregoing, and if called as a witness could, and would, testify in the manner herein above set forth.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct. Executed this 14th day of June, 2006, at San Diego, California.

//s// Cynthia K. Lay
CYNTHIA K. LAY

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EXHIBIT "A"

L. Scott Keehn, SBN 61691
ROBBINS & KEEHN, APC
530 B Street, Suite 2400
San Diego, California 92101
Telephone: 619-232-1700
Facsimile: 619-544-9095

**Attorneys for Petitioning Creditor,
Alan Stanly**

UNITED STATES BANKRUPTCY COURT

FOR THE SOUTHERN DISTRICT OF CALIFORNIA

In re: **FRANCIS J. LOPEZ,** **Alleged Debtor.**	**CASE NO. 05-05926-PBINV** **Involuntary Chapter 7** **PROOF OF SERVICE** **Dept.: Four** **Judge: Hon. Peter W. Bowie**

I, the undersigned, declare, that I am over the age of eighteen years and not a party to this cause. I am employed in, or am a resident of, the County of San Diego, California, and my business address is: Robbins & Keehn, APC, 530 B Street, Suite 2400, San Diego, California.

On the date shown below, I caused to be served the following document(s):

NOTICE OF SUBPOENA IN A CASE UNDER THE BANKRUPTCY CODE OF KELLY PLANTATION OWNERS ASSOCIATION;

NOTICE OF SUBPOENA IN A CASE UNDER THE BANKRUPTCY CODE OF FT. WALTON BEACH MEDICAL CENTER;

/////

NOTICE OF SUBPOENA IN A CASE UNDER THE BANKRUPTCY CODE OF ALLSTATE FLORIDIAN;

NOTICE OF SUBPOENA IN A CASE UNDER THE BANKRUPTCY CODE OF NORTHWEST FLORIDA DAILY NEWS;

NOTICE OF SUBPOENA IN A CASE UNDER THE BANKRUPTCY CODE OF OKALOOSA GAS DISTRICT;

NOTICE OF SUBPOENA IN A CASE UNDER THE BANKRUPTCY CODE OF COSTAL COMMUNITY INSURANCE;

NOTICE OF SUBPOENA IN A CASE UNDER THE BANKRUPTCY CODE OF PROGRESSIVE INSURANCE;

NOTICE OF SUBPOENA IN A CASE UNDER THE BANKRUPTCY CODE OF AMERICAN EXPRESS;

NOTICE OF SUBPOENA IN A CASE UNDER THE BANKRUPTCY CODE OF CHEVRON TEXACO;

NOTICE OF SUBPOENA IN A CASE UNDER THE BANKRUPTCY CODE OF AMERICAN HOME SHIELD;

NOTICE OF SUBPOENA IN A CASE UNDER THE BANKRUPTCY CODE OF VALLEY FORGE LIFE INSURANCE; and,

NOTICE OF SUBPOENA IN A CASE UNDER THE BANKRUPTCY CODE OF WAYNE WISE

[ ] BY PERSONAL SERVICE: I placed a true copy of the above document(s) in a sealed envelope clearly labeled to identify the attorney for the party being served, and personally caused said such envelope to be personally delivered on each addressee named hereafter:

[ ] BY FACSIMILE AND MAIL: I declare that upon the prior agreement of the party being served, I served the above named documents by facsimile transmission during usual office hours from facsimile number 619-544-9095, to a facsimile machine maintained by the person on whom it is served and that the transmission was reported as complete and without error. Thereafter, I mailed (by first-class mail, postage prepaid) a true copy to each addressee named hereafter:

[X] BY MAIL: I declare that I am readily familiar with the business practice for collection and processing of correspondence for mailing with the United States Postal Service, that the correspondence shall be deposited with the United States Postal Service this same day in the

/////

/////

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ordinary course of business; and that a true copy was placed in a separate envelope, with postage thereon fully prepaid for each addressee named hereafter:

M. Jonathan Hayes
Law Office of M. Jonathan Hayes
21800 Oxnard Street, Suite 840
Woodland Hills, CA 91367

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Executed on October 4, 2005. //s// Cynthia K. Lay
CYNTHIA K. LAY

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EXHIBIT "B"

L. Scott Keehn, SBN 61691
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Telephone: 619-232-1700
Facsimile: 619-544-9095

Attorneys for Petitioning Creditor, Alan Stanly

UNITED STATES BANKRUPTCY COURT

FOR THE SOUTHERN DISTRICT OF CALIFORNIA

In re: **FRANCIS J. LOPEZ,** **Alleged Debtor.**	**CASE NO. 05-05926-PBINV** **Involuntary Chapter 7** **PROOF OF SERVICE** **Dept.:** **Four** **Judge:** **Hon. Peter W. Bowie**

I, the undersigned, declare, that I am over the age of eighteen years and not a party to this cause. I am employed in, or am a resident of, the County of San Diego, California, and my business address is: Robbins & Keehn, APC, 530 B Street, Suite 2400, San Diego, California.

On the date shown below, I caused to be served the following document(s):

NOTICE OF SUBPOENA IN A CASE UNDER THE BANKRUPTCY CODE OF AURORA LOAN SERVICES, A LEHMAN BROTHERS COMPANY;

NOTICE OF SUBPOENA IN A CASE UNDER THE BANKRUPTCY CODE OF CITI CARDS;

/////

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NOTICE OF SUBPOENA IN A CASE UNDER THE BANKRUPTCY CODE OF COMPASS BANK;

NOTICE OF SUBPOENA IN A CASE UNDER THE BANKRUPTCY CODE OF BANK OF AMERICA;

NOTICE OF SUBPOENA IN A CASE UNDER THE BANKRUPTCY CODE OF HSBC CARD SERVICES;

NOTICE OF SUBPOENA IN A CASE UNDER THE BANKRUPTCY CODE OF PROGRESSIVE AUTO PRO INSURANCE COMPANY;

NOTICE OF SUBPOENA IN A CASE UNDER THE BANKRUPTCY CODE OF PROGRESSIVE AMERICAN INSURANCE COMPANY;

NOTICE OF SUBPOENA IN A CASE UNDER THE BANKRUPTCY CODE OF PROGRESSIVE EXPRESS INSURANCE COMPANY;

NOTICE OF SUBPOENA IN A CASE UNDER THE BANKRUPTCY CODE OF PROGRESSIVE BAYSIDE INSURANCE COMPANY;

NOTICE OF SUBPOENA IN A CASE UNDER THE BANKRUPTCY CODE OF PROGRESSIVE CONSUMERS INSURANCE COMPANY;

NOTICE OF SUBPOENA IN A CASE UNDER THE BANKRUPTCY CODE OF PROGRESSIVE SOUTHEASTERN INSURANCE COMPANY; and,

NOTICE OF SUBPOENA IN A CASE UNDER THE BANKRUPTCY CODE OF PROGRESSIVE CASUALTY INSURANCE COMPANY

[ ] BY PERSONAL SERVICE: I placed a true copy of the above document(s) in a sealed envelope clearly labeled to identify the attorney for the party being served, and personally caused said such envelope to be personally delivered on each addressee named hereafter:

[ ] BY FACSIMILE AND MAIL: I declare that upon the prior agreement of the party being served, I served the above named documents by facsimile transmission during usual office hours from facsimile number 619-544-9095, to a facsimile machine maintained by the person on whom it is served and that the transmission was reported as complete and without error. Thereafter, I mailed (by first-class mail, postage prepaid) a true copy to each addressee named hereafter:

[X] BY MAIL: I declare that I am readily familiar with the business practice for collection and processing of correspondence for mailing with the United States Postal Service, that the correspondence shall be deposited with the United States Postal Service this same day in the

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/////

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ordinary course of business; and that a true copy was placed in a separate envelope, with postage thereon fully prepaid for each addressee named hereafter:

M. Jonathan Hayes
Law Office of M. Jonathan Hayes
21800 Oxnard Street, Suite 840
Woodland Hills, CA 91367

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Executed on December 30, 2005. //s// Cynthia K. Lay
CYNTHIA K. LAY

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DOCKET NUMBER 69

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UNITED STATES BANKRUPTCY COURT

SOUTHERN DISTRICT OF CALIFORNIA

In Re: FRANCIS J. LOPEZ, Alleged Debtor	Case No. 05-05926-PBINV Involuntary Chapter 7 **DECLARATION OF L. SCOTT KEEHN IN OPPOSITION TO ALLEGED DEBTOR'S MOTION FOR SUMMARY JUDGMENT** Date: June 26, 2006 Time: 2:00 p.m. Judge: The Honorable Peter W. Bowie Ctrm: 4

I, L. SCOTT KEEHN, declare as follows:

1. I am an attorney duly admitted to practice before the Courts of this State, and before the United States District Court for the Southern District of California. I am a shareholder of the firm Robbins & Keehn, APC, counsel of record for the petitioning creditors herein. I am the shareholder in charge of the engagement of the firm on behalf of the petitioning creditors herein, and the attorney within the firm who is most knowledgeable with respect to all aspects of this matter.

2. In or about April of 2006, I did receive a settlement offer made by Jonathan Hayes, on behalf of Francis J. Lopez, in this matter. The petitioning creditors do not waive the privileged confidentiality of the substance of that offer. However, they would correct the record by

disclosing to the court that the terms of the offer as set forth in the "Declaration of Francis Lopez" filed in support of his motion for summary judgment at page 14 lines 27 to 28, are materially different from the terms of the offer communicated to me.

3. During the course of the firm's engagement in this matter, I caused a documents subpoena to be served upon the custodian of records for **Aurora Loan Services, LLC, A Lehman Brothers Company**, an entity that we were informed and believed had documents that would be admissible as evidence, or lead to the discovery of admissible evidence in this case. Attached hereto marked **Exhibit A** and incorporated herein by this reference are true and correct copies of documents that were produced by Aurora in response to the subpoena.

4. During the course of the firm's engagement in this matter, I caused a Requests For Production of Documents to be served on **Lopez**, through his attorney of record. Attached hereto marked as **Exhibits B, through E, and I through N, inclusive,** and incorporated herein by this reference are true and correct copies of documents that were produced by Lopez, either in response to that Request, or at his deposition conducted on April 27, 2006.

5. During the course of the firm's engagement in this matter, I caused a documents subpoena to be served upon the custodian of records for **Household Bank**, an entity identified as a creditor on the debtor's creditors list. Attached hereto marked as **Exhibits F, G, and H,** and incorporated herein by this reference are true and correct copies of documents that were produced on behalf of Household Bank, in response to the subpoena.

6. During the course of the firm's engagement in this matter, I caused a documents subpoena to be served upon **Wayne Wise**, a person identified as a creditor on the debtor's creditors list. Attached hereto marked **Exhibit O** and incorporated herein by this reference is a true and correct copy of the "Affidavit of Wayne Wise" that he caused to be produced in response to the subpoena.

7. Attached hereto marked as **Exhibit P,** and incorporated herein by this reference, is a true and correct copy of excerpts of the **Reporter's Transcript** for the Status Conference conducted on this case on May 1, 2006.

///

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8. At a hearing conducted in this case, on Monday December 19, 2005, this court granted Lopez's motion to bifurcate the proceedings into two phases. Phase one was to be limited to the issue of whether or not the petition was supported by an adequate number of petitioners; and, Phase Two would address the issue of whether or not the alleged debtor was in fact generally paying his debts as they came due in the June 30, 2005, time frame. The court did not require a formal order reflecting the bifurcation, and none was submitted. However, the order is reflected in the court's minute order for that hearing which appears as docket item 35. During the course of that hearing, the court made it clear that the bifurcation applied to discovery as well as trial.

9. I relied upon the bifurcation order and tailored my subsequent conduct in the case to comply with that order. Accordingly, I did not thereafter seek to enforce pending discovery, nor did I promulgate new discovery, calculated to discover admissible evidence on the issue of whether or not Lopez was in fact paying his debts as they came due in the June 30, 2005 time frame. Other than an announcement made at the last status conference by Lopez's attorney to the effect that he intended to bring a summary judgment motion that would dispose of both the phase one and Phase Two issues, and the summary judgment motion itself, I had no prior warning or other indication that Lopez or his counsel intended to abandon the protection that they had sought, and won, through the bifurcation order. I objected to proceeding on the Phase Two issues before I was released from the restraint of the court's bifurcated order and permitted to conduct discovery on the Phase Two issues.[1]

10. At this point I have not had any adequate opportunity to promulgate necessary discovery on the Phase Two issue – paying debts as they came due – which I would have promulgated but for the restraint imposed by the bifurcation order. Specifically, I would have, at a minimum, obtained discovery as follows:

A. Requests for admission that the debtor was not fully and timely paying his obligations as they came due in the June 30, 2005 time frame with separate requests for each creditor.

---

[1] See Exhibit P (Transcript of 5/7/06 Status Conference) at page 11, lines 7-21.

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B. Interrogatories requesting the identification of all facts upon which any denial of the requests for admission were predicated, as well as identification of documents evidencing those facts, and witnesses that could testify to the facts revealed in response to such interrogatories.

I would have also issued interrogatories to determine whether or not Lopez had obtained any credit reporting information relating to himself or his "*credit score*" within the period from June 30, 2004, to the date of response.

I would have also issued interrogatories to obtain the identification of all lawsuits in which Lopez was a party and were pending at any time from June 30, 2004, to the date of response.

I also would have inquired via interrogatories as to whether Lopez had any credit application declined in the period of June 30, 2004, to the date of his response.

C. Third Party Subpoenas. I would have issued subpoenas to third parties identified in the written discovery responses if it appeared from those responses that they might have admissible evidence, or documents that might lead to the discovery of admissible evidence.

D. Depositions. But for the bifurcation order, I would not have confined the scope of the deposition of Lopez conducted April 27, 2006, to issues that were calculated to produce admissible evidence on the issue of the number of creditors to be included in the "Section 303 Count" of creditors as of June 30, 2005. That expanded inquiry would have been facilitated by responses obtained to written discovery as summarized above.

I would also have conducted the deposition of Madeline Lopez. By early February of 2006, the documents produced by Aurora Loan Services in response to our subpoena, indicated, among other things, that in or about November, 2004, Madeline J. Lopez – the debtor's spouse – had refinanced their residence through a loan issued from Lehman Brothers Bank, FSB, a federal savings bank ("Lehman"). See Exhibit A for details.

I was surprised to learn from those documents that the refinancing of the residence was accomplished through a loan applied for and given solely on the credit of Madeline, and that the debtor was not identified as a borrower in that transaction. (See Exhibit A at bates number 0038 through 0041, and 0276 through 0280). The documents also indicated that Madeline's credit score

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at the time of the loan was 650, and that a credit score of 650 apparently fell below the acceptable "loan parameters" utilized by Lehman in evaluating a loan of that magnitude, because a specific exception to the standard loan parameters based on that low credit score was required (See Exhibit A at bates 0227). One of the legitimate inferences to be drawn from these facts is that Francis and Madeline purposefully decided that the refinancing loan would be taken solely in Madeline's name because of their concern that adverse credit information relating to Francis would be revealed as part of the application process and disqualify them for the loan. Testing the accuracy of this inference obviously required the deposition of Madeline to explore it more fully, and for the purpose of determining the facts upon which the decision for Francis not to participate in the loan process was made, as well as what adverse credit information Madeline was either aware of or concerned about at the time the decision was made. That in turn could have led to documents subpoenas, and perhaps other discovery, calculated to lead to admissible evidence demonstrating that Francis had bad credit history at the time of the refinancing application, and the bad credit information continued to and including the June 30, 2005, time frame. All of that would have been well within the scope of permissible discovery on the Phase Two issue in this case.

Deposition of Wayne Wise. The "Affidavit of Wayne Wise," produced in response to our document subpoena is neither admissible over a heresay objection, nor a model of clarity as a precise status as of June 30, 2005. Absent the agreement of Mr. Wise to travel to San Diego to testify at trial, his deposition would have been necessary to provide admissible evidence showing that his obligation was not being performed in accordance with its terms as of June 30, 2005.

The foregoing is not an exhaustive list of discovery that would probably have been needed to adequately prepare for the Phase Two trial. It is merely a summation of the minimal discovery that would have been taken, and which is now necessary to take to fully and fairly address the issue of whether or not Lopez was in fact generally paying his debts as they came due in the June 30, 2005, time frame.

11. I have firsthand knowledge of all of the foregoing, and if called as a witness, could and would, testify in the manner hereinabove set forth.

///

ROBBINS & KEEHN, APC
ATTORNEYS AT LAW
2400 UNION BANK BUILDING · 530 "B" STREET
SAN DIEGO, CALIFORNIA 92101
TELEPHONE (619) 232-1700 · TELECOPIER (619) 544-9095

I declare under penalty of perjury that the foregoing is true and correct, and that this Declaration was executed on June 14, 2006, at San Diego, California.

/s/ L. Scott Keehn
L. SCOTT KEEHN

ROBBINS & KEEHN, APC
ATTORNEYS AT LAW
2400 UNION BANK BUILDING · 530 "B" STREET
SAN DIEGO, CALIFORNIA 92101
TELEPHONE (619) 232-1700 · TELECOPIER (619) 544-9095

Documents from Aurora Loan Services

EXHIBIT A

AURORA LOAN SERVICES
A Lehman Brothers Company

Jennifer Bulmer
Paralegal - Litigation
Legal Department
Direct Dial Telephone: 720-945-4521
Facsimile: 720-945-3081
E-mail: jbulmer@alservices.com

February 1, 2006

VIA OVERNIGHT MAIL

L. Scott Keehn, Esq.
Robbins & Keehn, APC
530 "B" Street, Suite 2400
San Diego, CA 92101
Telephone: 619-232-1700

Re: **Francis J. Lopez; Subpoena in a case under the Bankruptcy Code**
Property Address: 310 Sand Myrtle Trail, Destin, FL 32541
Aurora Loan Number: 0019275023

Dear Mr. Keehn:

Aurora Loan Services LLC ("Aurora") is herein responding to the Subpoena we received on or about January 9, 2006. I have attached copies of the following documents from our files which are responsive to the Subpoena.

1) Copy of Servicing File Documents
2) Copy of Collateral File Documents
3) Copy of Payment History

It is my understanding that Aurora Loan Services LLC will be released from this Subpoena and will have no further obligation to you regarding this specific matter. If my understanding is incorrect, please contact me immediately at (720) 945-4521, otherwise I will close my file.

Sincerely,

Jennifer Bulmer
Paralegal - Litigation

jb:
Enclosures

NOTICE OF AS[illegible]MENT, SALE OR TRANSFER OF [illegible]RVIC[illegible] RIGHTS

Borrower Name & Address: MADELEINE J LOPEZ Loan Number: 0019275023

310 SAND MYRTLE TRAIL
DESTIN, FLORIDA 32541

You are hereby notified* that the servicing of your mortgage loan, that is, the right to collect payments from you, is being assigned, sold or transferred from
LEHMAN BROTHERS BANK, FSB

to
AURORA LOAN SERVICES , effective 12/16/04 .

The assignment, sale or transfer of the servicing of the mortgage loan does not affect any term or condition of the mortgage instruments, other than terms directly related to the servicing of your loan.

Except in limited circumstances, the law requires that your present servicer send you this notice at least 15 days before the effective date of transfer, or at closing. Your new servicer must also send you this notice no later than 15 days after this effective date or at closing. [In this case, all necessary information is combined in this one notice.]
Your present servicer is LEHMAN BROTHERS BANK, FSB .

If you have any questions relating to the transfer of servicing from your present servicer call
Customer Service at 877-266-7208 between
8 a.m. and 5 MST p.m. on the following days Monday - Friday . This is a toll-free or collect call number.

Your new servicer will be AURORA LOAN SERVICES .

The business address for your new servicer is: P.O. BOX 1706
SCOTTSBLUFF, NE 69363-1706 .
The toll-free or collect call telephone number of your new servicer is 800-550-0508 .
If you have any questions relating to the transfer of servicing to your new servicer call
Customer Service at 800-550-0508
between 8 a.m. and 5 MST p.m. on the following days Monday - Friday .
The date that your present servicer will stop accepting payments from you is 12/16/04 .
The date that your new servicer will start accepting payments from you is 12/16/04 .
Send all payments due on or after that date to your new servicer.
The transfer of servicing rights may affect the terms of or the continued availability of mortgage life or disability insurance or any other type of optional insurance in the following manner: ____________________

and you should take the following action to maintain coverage: ____________________

You should also be aware of the following information, which is set out in more detail in Section 6 of the Real Estate Settlement Procedures Act (RESPA) (12 U.S.C. Section 2605):
During the 60-day period following the effective date of the transfer of the loan servicing, a loan payment received by your old servicer before its due date may not be treated by the new loan servicer as late, and a late fee may not be imposed on you.
Section 6 of RESPA (12 U.S.C. Section 2605) gives you certain consumer rights. If you send a "qualified written request" to your loan servicer concerning the servicing of your loan, your servicer must provide you with a written acknowledgment within 20 Business Days of receipt of your request. A "qualified written request" is a written correspondence, other than notice on a payment coupon or other payment medium supplied by the servicer, which includes your name and account number, and your reasons for the request. If you want to send a "qualified written request" regarding the servicing of your loan, it must be sent to this address:

P.O. BOX 1706
SCOTTSBLUFF, NE 69363-1706

Not later than 60 Business Days after receiving your request, your servicer must make any appropriate corrections to your account, and must provide you with a written clarification regarding any dispute. During this 60-Business Day period, your servicer may not provide information to a consumer reporting agency concerning any overdue payment related to such period or qualified written request. However, this does not prevent the servicer from initiating foreclosure if proper grounds exist under the mortgage documents.
A Business Day is any day on which the offices of the business entity are open to the public for carrying on substantially all of its business functions.
Section 6 of RESPA also provides for damages and costs for individuals or classes of individuals in circumstances where servicers are shown to have violated the requirements of that Section. You should seek legal advice if you believe your rights have been violated.

*This notification is a requirement of Section 6 of the Real Estate Settlement Procedures Act (RESPA) (12 U.S.C. 2605).

LEHMAN BROTHERS BANK, FSB	11/01/2004	AURORA LOAN SERVICES	11/01/2004
PRESENT SERVICER	Date	FUTURE SERVICER	Date

~553R (9501) 12/94

VMP MORTGAGE FORMS - (800)521-7291

SIGNATURE/NAME AFFIDAVIT

DATE: 11/02/04

LOAN #: 0019275023

BORROWER: MADELEINE J LOPEZ

THIS IS TO CERTIFY THAT MY LEGAL SIGNATURE IS AS WRITTEN AND TYPED BELOW.
(This signature must exactly match signatures on the Note and Mortgage or Deed of Trust.)

MADELEINE J LOPEZ	[signature]
(Print or Type Name)	Signature

(If applicable, complete the following.)

I AM ALSO KNOWN AS:

MADELEINE MAGILL LOPEZ/MADELEINE LOPEZ	[signature]
(Print or Type Name)	Signature
	[signature]
(Print or Type Name)	Signature
(Print or Type Name)	Signature
(Print or Type Name)	Signature

and that

are one and the same person.

State/Commonwealth of
County/Parish of
Okaloosa

Subscribed and sworn (affirmed) before me Madeleine J. Lopez
this 2nd day of November 2004

Lisa M. Ward
My Commission DD198599
Expires March 31 2007

[signature]

Notary Public in and for
the State/Commonwealth of
County/Parish of
My Commission Expires:

AURORA 0035

100025440001953568
0019275023

Return To: AURORA LOAN SERVICES INC.
3040 Route 22 West
Branchburg, NJ, 08876

This document was prepared by:
ROSE HAHN
LEHMAN BROTHERS BANK
400 PROFESSIONAL DRIVE, SUITE 100
GAITHERSBURG, MD 20879

[Space Above This Line For Recording Data]

MORTGAGE

MIN 100025440001953568

DEFINITIONS

Words used in multiple sections of this document are defined below and other words are defined in Sections 3, 11, 13, 18, 20 and 21. Certain rules regarding the usage of words used in this document are also provided in Section 16.

(A) "Security Instrument" means this document, which is dated November 2, 2004, together with all Riders to this document.
(B) "Borrower" is

MADELEINE J LOPEZ

Borrower is the mortgagor under this Security Instrument.
(C) "MERS" is Mortgage Electronic Registration Systems, Inc. MERS is a separate corporation that is acting solely as a nominee for Lender and Lender's successors and assigns. MERS is the mortgagee under this Security Instrument. MERS is organized and existing under the laws of Delaware, and has an address and telephone number of P.O. Box 2026, Flint, MI 48501-2026, tel. (888) 679-MERS.
(D) "Lender" is LEHMAN BROTHERS BANK, FSB, A FEDERAL SAVINGS BANK

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0019275023

BY SIGNING BELOW, Borrower accepts and agrees to the terms and covenants contained in this Security Instrument and in any Rider executed by Borrower and recorded with it.
Signed, sealed and delivered in the presence of:

MADELEINE J LOPEZ (Seal)
-Borrower

(Address)

(Seal)
-Borrower

(Address)

(Seal)
-Borrower

(Address)

(Seal)
-Borrower

(Address)

(Seal)
-Borrower

(Address)

(Seal)
-Borrower

(Address)

(Seal)
-Borrower

(Address)

(Seal)
-Borrower

(Address)

BORROWER'S AFFIDAVIT

Date: 11/02/2004

Loan #: 0019275023
Case #:

I/We, MADELEINE J LOPEZ,

("Borrower(s)") being duly sworn according to law make the following statements and representations, which statements and representations are given to induce LEHMAN BROTHERS BANK, FSB (Lender) to make a loan (the "Loan") to me/us, and/or to induce the Veterans Administration, and/or the Federal Housing Administration and/or a private insurer to insure/guarantee the Loan which Loan is secured by property located at:

310 SAND MYRTLE TRAIL, DESTIN, FL 32541
("Property")

I/WE HEREBY STATE AND REPRESENT AS FOLLOWS:

1. **PURCHASE PRICE.** That the total purchase price for the Property is N/A

2. **ACKNOWLEDGMENT OF PAYMENT.** That the required down payment, settlement costs and prepaid expenses as required to legally settle this purchase of the Property were paid by me/us.

3. **SOURCE OF FUNDS.** That no portion of the down payment, closing costs and prepaid expenses were borrowed from any source and that I/we did not incur any debts in this transaction except the subject loan and no additional agreements or kickbacks with the seller or agent have been made that have not been disclosed to the Lender.

4. **OCCUPANCY.** That I/we (place your initials on the appropriate line below):

   ✓ presently occupy the Property as my/our principal residence; or,

   ______ intend to occupy the Property on or before ______________ (Date) as my/our principal residence; or

   ______ intend to occupy the Property as my/our second home (vacation, etc.) while maintaining my/our principal residence elsewhere (and will not use the Property for rental purposes); or,

   ______ do not intend to occupy the Property and intend to use the Property for investment/rental purposes.

5. **MAILING ADDRESS.** That my/our correct mailing address is:

   ☑ the address for the Property which is set forth at the top of this Borrower's Affidavit; or,

   ☐ as follows: ______________________________

6. **PROPERTY INSPECTION.** That I/we have inspected the Property and accept the same;

   I/We believe the property to be structurally sound and am/are willing to close this transaction with the property in its present condition.

   I/We indemnify and hold LEHMAN BROTHERS BANK, FSB harmless from any and all claims or damages arising from any and all structural defects of which I/we are now aware of or which I/we discover subsequent to loan closing.

7. **HOA DUES.** That the Property:

   ☒ is located in a: ☐ Condominium Project, ☒ Planned Unit Development, ☐ Project which assesses a maintenance charge; or

   ☐ is NOT subject to any such maintenance charge.

8. **UTILITIES.** That I/we, acknowledge and accept that the Property:

   WATER

   ☐ has well water; or,

   ☐ does not have well water but is connected to a utility which provides water.

   SEPTIC

   ☐ has a septic system; or,

   ☐ does not have a septic system but is connected to a utility providing sewer service.

Lender or its successors or assigns, at their option and as permitted by applicable law, may: (1) receive from the Borrowers an amount sufficient to reduce the principal amount of the Loan to a level (or maximum loan to value) normally required by the Lender; (2) declare all sums secured by the Security Instrument immediately due and payable; (3) collect from the Borrower the additional fees (origination and other fees) normally charged by the Lender for non-owner-occupied loans; (4) adjust the interest rate and payment to be in accordance with program guidelines.

6. The Borrowers are advised that the making of any misrepresentations or misstatements in this Affidavit or any other document executed in connection with the Loan, the failure to move into the property by the specified time, or a breach of any of the conditions of this Affidavit will constitute a default under the terms of and provisions of the Note and Security Instrument executed in connection with the Loan.

7. Borrowers acknowledge that they understand that it is a federal crime punishable by a fine or imprisonment, or both to knowingly make any false statement concerning this Affidavit as applicable under the provisions of Title 18, United States Code, Sections 1001,1010 and 1014.

8. The agreements and covenants contained in this Affidavit shall survive the closing of the Loan.

9. This Affidavit is binding upon the parties, their heirs, administrators, executors, personal representatives, successors, and assigns.

MADELEINE J LOPEZ (Signature of Borrower) Date 11-2-04

(Signature of Borrower) Date

(Signature of Borrower) Date

(Signature of Borrower) Date

STATE of: FLORIDA County ss: Okaloosa

Subscribed and sworn to before me this 2nd day of November, 2004

WITNESS my hand and official seal.

Signature:

Name (typed or printed)

My Commission Expires: Lisa M. Ward My Commission DD180585 Expires March 41 2007

ALSOCC2 9/2004

Loan Parameter Exception Request

A copy of this document must be included as the TOP ITEM in the submission file
Your LPER Request Should Be Faxed to: (720) 945-5928

Note: Issuance of this exception does not constitute loan approval nor does it indicate that the loan meets program acceptance. Loan approval is subject to satisfaction of underwriting criteria in the Underwriting Guidelines.

Date: 10/12/04	Aurora Loan No: LR1046991 Correct	Aurora Contact:
Seller: Primeland America	Seller ID: 1510	
Seller Contact: Al Bader / Marie	Phone No: ( ) 954-929-8560	
Fax # completed LPER should be sent to: ( ) 954-925-9223	Email Address: a@primelandamerica.com	

Borrower Name: Lopez, Madeleine J.	SS#: 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	Credit Score: 650
Co-B Name:	SS#:	Credit Score:
Property Address: 310 Sand Myrtle Trail	City: Destin	State: Florida

Reserves: (Net of Proceeds)	Appraised Value: 1,250,000 Purchase Price:	LTV: 60.00	CLTV: 60.00
Loan Amount: 750000	Ratios: no doc		

Borrower Profession: N/A	Years on Job: N/A
Co-Borrower Profession:	Years on Job:

Occupancy	Purpose	Documentation
☒ Owner Occupied	☐ Purchase	☐ Full/Alt Doc
☐ Second Home	☐ Refi – No Cash Out	☐ Limited Doc
☐ Non-Owner Occupied	☒ Refi – Cash Out	☐ No Ratio
	☐ Construction/Perm	☒ No Doc

Product Code		Property Type
☐ A30F – 30 Yr. Fixed	☐ A76L – 7/6 LIBOR	☒ SFD – PUD
☐ A20F – 20 Yr. Fixed	☐ A10L – 10/6 LIBOR	☐ Two Unit
☐ A15 F – 15 Yr. Fixed	☐ A31L – 3/1 LIBOR	☐ Three Unit
☐ A6MH – 6-mo LIBOR High Margin	☐ A51L – 5/1 LIBOR	☐ Four Unit
☐ A36L – 3/6 LIBOR	☐ A71L – 7/1 LIBOR	☐ Condo <= 4 Stories
☒ A56L – 5/6 LIBOR	☐ A101 – 10/1 LIBOR	☐ Condo > 4 Stories
	☐ Other: ______	☐ Condotel <= 4 Stories
		☐ Condotel > 4 Stories
		☐ Other:

Description of Exception:	Credit Score
Compensating Factors:	LTV

For Aurora Use Only:

☐ Approved
☐ Approved Subject to: ______
☐ Declined

Aurora Exception Number: ______

Pricing Adjustments:

Loan Amount/Program: ______
Purpose: ______
Occupancy: ______
Property Type: ______
Credit Score: ______
Documentation Type: ______
Other: ______
Exception Charge: ______
Net Price to/from client: ______
Net Price to/from MI Company: ______

Stated adjustments to rate, margin, and/or price (if applicable are inclusive of standard Rate Sheet adjustments for the parameters noted above with the exception of interest-only, non-escrowed, prepayment premium (unless prepayment is required as indicated above) and best-efforts adjustments.

Date: ______ By: ______ Phone: (800) 880-0128 Ex.______

Comments: ______

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ADJUSTABLE RATE NOTE

(LIBOR Six-Month Index (As Published In *The Wall Street Journal*) - Rate Caps)

THIS NOTE CONTAINS PROVISIONS ALLOWING FOR CHANGES IN MY INTEREST RATE AND MY MONTHLY PAYMENT. THIS NOTE LIMITS THE AMOUNT MY INTEREST RATE CAN CHANGE AT ANY ONE TIME AND THE MAXIMUM RATE I MUST PAY.

November 2, 2004	DESTIN ,	FLORIDA
[Date]	[City]	[State]

310 SAND MYRTLE TRAIL, DESTIN, FLORIDA 32541
[Property Address]

19275023

1. BORROWER'S PROMISE TO PAY

In return for a loan that I have received, I promise to pay U.S. $ 750,000.00 (this amount is called "Principal"), plus interest, to the order of Lender. Lender is LEHMAN BROTHERS BANK, FSB, A FEDERAL SAVINGS BANK

I will make all payments under this Note in the form of cash, check or money order.

I understand that Lender may transfer this Note. Lender or anyone who takes this Note by transfer and who is entitled to receive payments under this Note is called the "Note Holder."

2. INTEREST

Interest will be charged on unpaid Principal until the full amount of Principal has been paid. I will pay interest at a yearly rate of 5.875 %. The interest rate I will pay may change in accordance with Section 4 of this Note.

The interest rate required by this Section 2 and Section 4 of this Note is the rate I will pay both before and after any default described in Section 7(B) of this Note.

3. PAYMENTS

(A) Time and Place of Payments

I will pay Principal and interest by making a payment every month.

I will make my monthly payments on the first day of each month beginning on January 1 , 2005 . I will make these payments every month until I have paid all of the principal and interest and any other charges described below that I may owe under this Note. Each monthly payment will be applied as of its scheduled due date and will be applied to interest before Principal. If, on December 1, 2034 , I still owe amounts under this Note, I will pay those amounts in full on that date, which is called the "Maturity Date."

I will make my monthly payments at LEHMAN BROTHERS BANK, FSB 400 PROFESSIONAL DRIVE, SUITE 500, GAITHERSBURG, MD 20879 or at a different place if required by the Note Holder.

(B) Amount of My Initial Monthly Payments

Each of my initial monthly payments will be in the amount of U.S. $ 4,436.54 . This amount may change.

(C) Monthly Payment Changes

Changes in my monthly payment will reflect changes in the unpaid Principal of my loan and in the interest rate that I must pay. The Note Holder will determine my new interest rate and the changed amount of my monthly payment in accordance with Section 4 of this Note.

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4. INTEREST RATE AND MONTHLY PAYMENT CHANGES

(A) Change Dates

The interest rate I will pay may change on the first day of December, 2009 , and on that day every 6th month thereafter. Each date on which my interest rate could change is called a "Change Date."

(B) The Index

Beginning with the first Change Date, my interest rate will be based on an Index. The "Index" is the average of interbank offered rates for six month U.S. dollar-denominated deposits in the London market ("LIBOR"), as published in *The Wall Street Journal*. The most recent Index figure available as of the first business day of the month immediately preceding the month in which the Change Date occurs is called the "Current Index."

If the Index is no longer available, the Note Holder will choose a new index that is based upon comparable information. The Note Holder will give me notice of this choice.

(C) Calculation of Changes

Before each Change Date, the Note Holder will calculate my new interest rate by adding TWO AND 25 HUNDREDTHS percentage points (2.250 %) to the Current Index. The Note Holder will then round the result of this addition to the nearest one-eighth of one percentage point (0.125%). Subject to the limits stated in Section 4(D) below, this rounded amount will be my new interest rate until the next Change Date.

The Note Holder will then determine the amount of the monthly payment that would be sufficient to repay the unpaid Principal that I am expected to owe at the Change Date in full on the Maturity Date at my new interest rate in substantially equal payments. The result of this calculation will be the new amount of my monthly payment.

(D) Limits on Interest Rate Changes

The interest rate I am required to pay at the first Change Date will not be greater than 11.875 % or less than 2.250 %. Thereafter, my interest rate will never be increased or decreased on any single Change Date by more than TWO percentage point(s) (2.000 %) from the rate of interest I have been paying for the preceding 6 months. My interest rate will never be greater than 11.875 %.

(E) Effective Date of Changes

My new interest rate will become effective on each Change Date. I will pay the amount of my new monthly payment beginning on the first monthly payment date after the Change Date until the amount of my monthly payment changes again.

(F) Notice of Changes

The Note Holder will deliver or mail to me a notice of any changes in my interest rate and the amount of my monthly payment before the effective date of any change. The notice will include information required by law to be given to me and also the title and telephone number of a person who will answer any question I may have regarding the notice.

5. BORROWER'S RIGHT TO PREPAY SEE ATTACHED ADDENDUM

~~I have the right to make payments of Principal at any time before they are due. A payment of Principal only is known as a "Prepayment." When I make a Prepayment, I will tell the Note Holder in writing that I am doing so. I may not designate a payment as a Prepayment if I have not made all the monthly payments due under this Note.~~ XXXXXXXXXXXXXXXXXXXXXXXX

~~I may make a full Prepayment or partial Prepayments without paying any Prepayment charge. The Note Holder will use my Prepayments to reduce the amount of Principal that I owe under this Note. However, the Note Holder may apply my Prepayment to the accrued and unpaid interest on the Prepayment amount, before applying my Prepayment to reduce the Principal amount of this Note. If I make a partial Prepayment, there will be no changes in the due dates of my monthly payments unless the Note Holder agrees in writing to those changes. My partial Prepayment may reduce the amount of my monthly payments after the first Change Date following my partial Prepayment. However, any reduction due to my partial Prepayment may be offset by an interest rate increase.~~ XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX

6. LOAN CHARGES

If a law, which applies to this loan and which sets maximum loan charges, is finally interpreted so that the interest or other loan charges collected or to be collected in connection with this loan exceed the permitted limits, then: (a) any such loan charge shall be reduced by the amount necessary to reduce the charge to the permitted limit; and (b) any sums already collected from me that exceeded permitted limits will be refunded to me. The Note Holder may choose to make this refund by reducing the Principal I owe under this Note or by making a direct payment to me. If a refund reduces Principal, the reduction will be treated as a partial Prepayment.

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7. BORROWER'S FAILURE TO PAY AS REQUIRED

(A) Late Charges for Overdue Payments

If the Note Holder has not received the full amount of any monthly payment by the end of 15 calendar days after the date it is due, I will pay a late charge to the Note Holder. The amount of the charge will be 5.00 % of my overdue payment of principal and interest. I will pay this late charge promptly but only once on each late payment.

(B) Default

If I do not pay the full amount of each monthly payment on the date it is due, I will be in default.

(C) Notice of Default

If I am in default, the Note Holder may send me a written notice telling me that if I do not pay the overdue amount by a certain date, the Note Holder may require me to pay immediately the full amount of Principal that has not been paid and all the interest that I owe on that amount. That date must be at least 30 days after the date on which the notice is mailed to me or delivered by other means.

(D) No Waiver By Note Holder

Even if, at a time when I am in default, the Note Holder does not require me to pay immediately in full as described above, the Note Holder will still have the right to do so if I am in default at a later time.

(E) Payment of Note Holder's Costs and Expenses

If the Note Holder has required me to pay immediately in full as described above, the Note Holder will have the right to be paid back by me for all of its costs and expenses in enforcing this Note to the extent not prohibited by applicable law. Those expenses include, for example, reasonable attorneys' fees.

8. GIVING OF NOTICES

Unless applicable law requires a different method, any notice that must be given to me under this Note will be given by delivering it or by mailing it by first class mail to me at the Property Address above or at a different address if I give the Note Holder a notice of my different address.

Unless the Note Holder requires a different method, any notice that must be given to the Note Holder under this Note will be given by mailing it by first class mail to the Note Holder at the address stated in Section 3(A) above or at a different address if I am given a notice of that different address.

9. OBLIGATIONS OF PERSONS UNDER THIS NOTE

If more than one person signs this Note, each person is fully and personally obligated to keep all of the promises made in this Note, including the promise to pay the full amount owed. Any person who is a guarantor, surety or endorser of this Note is also obligated to do these things. Any person who takes over these obligations, including the obligations of a guarantor, surety or endorser of this Note, is also obligated to keep all of the promises made in this Note. The Note Holder may enforce its rights under this Note against each person individually or against all of us together. This means that any one of us may be required to pay all of the amounts owed under this Note.

10. WAIVERS

I and any other person who has obligations under this Note waive the rights of Presentment and Notice of Dishonor. "Presentment" means the right to require the Note Holder to demand payment of amounts due. "Notice of Dishonor" means the right to require the Note Holder to give notice to other persons that amounts due have not been paid.

11. UNIFORM SECURED NOTE

This Note is a uniform instrument with limited variations in some jurisdictions. In addition to the protections given to the Note Holder under this Note, a Mortgage, Deed of Trust, or Security Deed (the "Security Instrument"), dated the same date as this Note, protects the Note Holder from possible losses that might result if I do not keep the promises that I make in this Note. That Security Instrument describes how and under what conditions I may be required to make immediate payment in full of all amounts I owe under this Note. Some of those conditions read as follows:

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0019275023

Transfer of the Property or a Beneficial Interest in Borrower. As used in this Section 18, "Interest in the Property" means any legal or beneficial interest in the Property, including, but not limited to, those beneficial interests transferred in a bond for deed, contract for deed, installment sales contract or escrow agreement, the intent of which is the transfer of title by Borrower at a future date to a purchaser.

If all or any part of the Property or any Interest in the Property is sold or transferred (or if Borrower is not a natural person and a beneficial interest in Borrower is sold or transferred) without Lender's prior written consent, Lender may require immediate payment in full of all sums secured by this Security Instrument. However, this option shall not be exercised by Lender if such exercise is prohibited by Applicable Law. Lender also shall not exercise this option if: (a) Borrower causes to be submitted to Lender information required by Lender to evaluate the intended transferee as if a new loan were being made to the transferee; and (b) Lender reasonably determines that Lender's security will not be impaired by the loan assumption and that the risk of a breach of any covenant or agreement in this Security Instrument is acceptable to Lender.

To the extent permitted by Applicable Law, Lender may charge a reasonable fee as a condition to Lender's consent to the loan assumption. Lender also may require the transferee to sign an assumption agreement that is acceptable to Lender and that obligates the transferee to keep all the promises and agreements made in the Note and in this Security Instrument. Borrower will continue to be obligated under the Note and this Security Instrument unless Lender releases Borrower in writing.

If Lender exercises the option to require immediate payment in full, Lender shall give Borrower notice of acceleration. The notice shall provide a period of not less than 30 days from the date the notice is given in accordance with Section 15 within which Borrower must pay all sums secured by this Security Instrument. If Borrower fails to pay these sums prior to the expiration of this period, Lender may invoke any remedies permitted by this Security Instrument without further notice or demand on Borrower.

12. DOCUMENTARY TAX

The state documentary tax due on this Note has been paid on the mortgage securing this indebtedness.

WITNESS THE HAND(S) AND SEAL(S) OF THE UNDERSIGNED.

_____ (Seal) MADELEINE J LOPEZ -Borrower

_____ (Seal) -Borrower

_____ (Seal) -Borrower

_____ (Seal) -Borrower

_____ (Seal) -Borrower

_____ (Seal) -Borrower

_____ (Seal) -Borrower

_____ (Seal) -Borrower

[Sign Original Only]

0019275023

ADDENDUM TO NOTE

This addendum is made November 2 , 2004 and is incorporated into and deemed to amend and supplement the Adjustable Rate Note of the same date.

The property covered by this addendum is described in the Security Instrument and located at:
310 SAND MYRTLE TRAIL , DESTIN , FLORIDA 32541

AMENDED PROVISIONS

In addition to the provisions and agreements made in the Note, I/we further covenant and agree as follows:

ADJUSTABLE INTEREST RATE AND MONTHLY PAYMENT CHANGES

Limits on Interest Rate Changes

The interest rate I am required to pay at the first Change Date will not be greater than 11.875 % or less than 2.250%. Thereafter, my adjustable interest rate will never be increased or decreased on any single Change Date by more than TWO percentage point(s) (2 %) from the rate of interest I have been paying for the preceding six (6) months. My interest rate will never be greater than 11.875%. My interest rate will never be less than 2.250 %.

UNIFORM SECURED NOTE

This Note is a uniform instrument with limited variations in some jurisdictions. In addition to the protections given to the Note Holder under this Note, a Mortgage, Deed of Trust, or Security Deed (the "Security Instrument"), dated the same date as this Note, protects the Note Holder from possible losses that might result if I do not keep the promises that I make in this Note. That Security Instrument describes how and under what conditions I may be required to make immediate payment in full of all amounts I owe under this Note. Some of those conditions read as follows:

Transfer of the Property or a Beneficial Interest in Borrower. As used in this Section 18, "Interest in the Property" means any legal or beneficial interest in the Property, including, but not limited to, those beneficial interests transferred in a bond for deed, contract for deed, installment sales contract or escrow agreement, the intent of which is the transfer of title by Borrower at a future date to a purchaser.

If all or any part of the Property or any Interest in the Property is sold or transferred (or if Borrower is not a natural person and a beneficial interest in Borrower is sold or transferred) without Lender's prior written consent, Lender may require immediate payment in full of all sums secured by this Security Instrument. However, this option shall not be exercised by Lender if such exercise is prohibited by Applicable Law.

If Lender exercises this option, Lender shall give Borrower notice of acceleration. The notice shall provide a period of not less than 30 days from the date the notice is given in accordance with Section 15 within which Borrower must pay all sums secured by this Security Instrument. If Borrower fails to pay these sums prior to the expiration of this period, Lender may invoke any remedies permitted by this Security Instrument without further notice or demand on Borrower.

In Witness Thereof, Trustor has executed this addendum.

Witness

11-2-04
Date

MADELEINE J LOPEZ

Date

Date

Date

DIS0211
1261 LIBOR Addendum to Note

AURORA 0280

1/01

EXHIBIT B

Account Number	Credit Line	Cash or Credit Available	Days in Billing Cycle	Closing Date	Total Minimum Payment Due	Payment Due Date
5490 9991 7848 8929	$10,500.00	$464.00	29	05/10/05	$146.00	06/04/05

Posting Date	Transaction Date	Reference Number	Card Type	Category	Transactions MAY 2005 STATEMENT	Charges	Credits (CR)
PAYMENTS AND CREDITS							
04/29		0371	MC		PAYMENT - NET ACCESS		90.00 CR
PURCHASES AND ADJUSTMENTS							
05/07	05/07	9918	MC	C	LATE FEE FOR PAYMENT DUE 05/06	39.00	
					TOTAL FOR BILLING CYCLE FROM 04/12/2005 THROUGH 05/10/2005	$39.00	$90.00 CR

WORLD POINTS
0 MONTHLY EARNINGS
0 POINTS AVAILABLE
0 BONUS POINTS THIS MONTH
GO TO IBSWORLDPOINTS.COM/OFFERS
FOR CURRENT BONUS POINT OFFERS

IMPORTANT NEWS

ENJOY THE CONVENIENCE AND FLEXIBILITY THE ENCLOSED CHECKS OFFER.

YOU ARE A VALUED CUSTOMER. WE WANT TO MAKE SURE YOU ARE AWARE THAT WE HAVE NOT RECEIVED YOUR PAYMENT. PLEASE SEND THE AMOUNT DUE TODAY. IF IT HAS BEEN MAILED, THANK YOU.

MYCONCIERGE CAN ASSIST WITH HARD-TO-FIND TICKETS, DINING RESERVATIONS, UNIQUE GIFTS, FLOWERS, AND MUCH MORE! VISIT WWW.IBSWORLDPOINTS.COM FOR DETAILS.

SUMMARY OF TRANSACTIONS

Previous Balance	(-) Payments and Credits	(+) Cash Advances	(+) Purchases and Adjustments	(+) Periodic Rate FINANCE CHARGES	(+) Transaction Fee FINANCE CHARGES	(=) New Balance Total
$10,008.23	$90.00	$0.00	$39.00	$78.77	$0.00	$10,036.00

TOTAL MINIMUM PAYMENT DUE

Past Due Amount	$14.00
Current Payment	$132.00
Total Minimum Payment Due	$146.00

FINANCE CHARGE SCHEDULE

Category	Periodic Rate	Corresponding Annual Percentage Rate	Balance Subject to Finance Charge
Cash Advances			
A. BALANCE TRANSFERS, CHECKS	0.010931% DLY	3.99%	$0.00
B. ATM, BANK	0.054767% DLY	19.99%	$0.00
C. PURCHASES	0.027123% DLY	9.90%	$5.38
D. OTHER BALANCES	0.027123% DLY	9.90%	$10,009.03

FOR THIS BILLING PERIOD:
ANNUAL PERCENTAGE RATE 9.90%
(Includes Periodic Rate and Transaction Fee Finance Charges.)

PLEASE SEE REVERSE SIDE FOR IMPORTANT INFORMATION.

FOR YOUR SATISFACTION, EVERY HOUR, EVERY DAY

- For Customer Satisfaction and up to the minute automated information including, balance, available credit, payments received, payments due, due date, payment address information, or to request duplicate statements, call 1-800-223-7046.
- For TDD (Telecommunication Device for the Deaf) assistance, call 1-800-346-3178.
- Mail payments to: BANKCARD SERVICES, P.O. BOX 15137, WILMINGTON, DE 19886-5137.
- Billing rights are preserved only by written inquiry. Mail billing inquiries, using form on the back, and other inquiries to: BANKCARD SERVICES, P.O. BOX 15026, WILMINGTON, DE 19850-5026.

1648 51X Y 1SY 0802 0000 00

USE010 5490 9991 7848 8929 PAGE 1 OF 1

EXHIBIT C

FRANCIS J LOPEZ

Account Number: 4050 8605 1242 9141

Your Bank of America Visa® Account

New Balance $2,188.63

Total Credit Line	$2,200.00	Available Credit	$11.37
Cash Limit	$1,100.00	Available Cash	$11.00
Overlimit Amount	$0.00	Billing Date	05/13/05
Minimum Payment Due	$54.00	Payment Due Date	06/07/05

24-Hour Customer Service 1.800.732.9194
For Lost or Stolen Cards 1.800.848.6090
Pay online! Visit www.bankofamerica.com

Transactions

View recent transactions and pay your bill online at www.bankofamerica.com.

POST. DATE	TRANS. DATE	REF. NO.	DESCRIPTION	AMOUNT CR=CREDIT
May 07	May 06	208	PAY BY PHONE PAYMENT	CR $50.00
May 07	May 06	208	PAY BY PHONE FEE	$10.00
May 12	May 11	448	YAH*YAHOO SM BUS/MAIL 408-349-5151 CA	$11.95
May 12	May 11	455	YAH*YAHOO SM BUS/MAIL 408-349-5151 CA	$16.90
May 13	May 13		PERIODIC FINANCE CHARGE	$48.01

ount Summary

Previous Balance		$2,151.77
Purchases	+	$28.85
Cash Advances	+	$0.00
Other Debits	+	$10.00
Credits	-	$0.00
FINANCE CHARGE	+	$48.01
Payments	-	$50.00
New Balance	=	$2,188.63

Finance Charge Summary

	Corresponding APR	Daily (D) / Monthly (M) Periodic Rate	Average Daily Balance (ADB)	Minimum (M) / Periodic (P) Charge
Purchases	26.960%	0.07386%v D	$2,105.54	$46.65 P
Cash	26.960%	0.07386%v D	$61.62	$1.36 P

ANNUAL PERCENTAGE RATE 26.960% v=Variable

#1617 54.00

Bank of America

Customer Corner

IMPORTANT NOTICE. An Important Summary of Changes to Your Account can be found within this statement. Please read the information carefully and retain it for your records.

Your account is currently subject to the Penalty Rate. Once the minimum number of consecutive payments are made and you do not exceed your Credit Limit during that time, the Purchase, Cash Advance and/or Balance Transfer APRs will revert to the terms of the Additional Disclosure as modified by the Important Summary of Changes to Your Account within this statement.

Important Notice: You have a new credit card payment address. If you make your payment through an online bill pay service, please include the new address to ensure payment is received by the due date. Your new payment address is reflected on your payment coupon below.

Please return remit coupon with your payment ↓

EXHIBIT D

FRANCIS J LOPEZ

Bank of America

Account Number: 4050 8605 1242 9141

Your Bank of America Visa® Account

New Balance	$2,309.52	Past Due Amount	$54.00
Total Credit Line	$2,200.00	Available Credit	$0.00
Cash Limit	$1,100.00	Available Cash	$0.00
Overlimit Amount	$74.52	Billing Date	06/13/05
Minimum Payment Due	$216.52	Payment Due Date	07/08/05

24-Hour Customer Service 1.800.732.9194
For Lost or Stolen Cards 1.800.848.6090
Pay online! Visit www.bankofamerica.com

Transactions

View recent transactions and pay your bill online at www.bankofamerica.com.

POST. DATE	TRANS. DATE	REF. NO.	DESCRIPTION	AMOUNT CR=CREDIT
Jun 08	Jun 08		LATE PAYMENT FEE	$35.00
Jun 13	Jun 13		OVERLIMIT FEE ASSESSED FOR JUN 13, 2005	$35.00
Jun 13	Jun 13		PERIODIC FINANCE CHARGE	$50.89

Account Summary

Previous Balance		$2,188.63
Purchases	+	$0.00
Advances	+	$0.00
Other Debits	+	$70.00
Credits	-	$0.00
FINANCE CHARGE	+	$50.89
Payments	-	$0.00
New Balance	=	$2,309.52
Past Due Amount	=	$54.00

Finance Charge Summary

	Corresponding APR	Daily (D) / Monthly (M) Periodic Rate	Average Daily Balance (ADB)	Minimum (M) / Periodic (P) Charge
Purchases	27.080%	0.07419%v D	$2,151.11	$49.47 P
Cash	27.080%	0.07419%v D	$62.04	$1.42 P

ANNUAL PERCENTAGE RATE 27.080% v=Variable

When your accounts become Bank of America accounts, you may be unable to use your ATM or Check Card to access your Credit Card account at the ATM. To regain access, call the Customer Service and Support number on the back of your ATM or Check Card to request that your Credit be re-linked.

Customer Corner

Check out the new line of products created exclusively for Bank of America customers: shop online at 'www.bankofamericastore.com /customer'. From a currency converter to a document holder, you will find tools to help manage and organize your finances.

Save $20.00 at a BLOCKBUSTER® store near you!

Just try Great Fun®, the super discount dining and entertainment service for 2 months for only $1. You'll save with up to 50% discounts at favorite restaurants and hotels across town and across the country. Go to www.greatfunonline.com/offer and sample the savings for yourself. Starting with your $20.00 BLOCKBUSTER Gift Card! When you enroll and try Great Fun. Certain limitations, restrictions, and exclusions apply.

Please return remit coupon with your payment

Bank of America

0005000 0021652 0230952 4050860512429141

BANK OF AMERICA
PO BOX 650260
DALLAS TX 75265-0260

617 1 AT .292 06-13-2330-00MS-411-T=004

FRANCIS J LOPEZ **P0000617
PO BOX 219
DESTIN, FL 32540-0219

Payment Coupon

Account Number	4050 8605 1242 9141
Payment Due Date	07/08/05
Total Minimum Payment Due	$216.52

New Balance: $2,309.52

Amount Enclosed

$

Make check or money order payable to Bank of America.

:5240222501:0114051242914 1"

EXHIBIT E

BEST BUY
Thousands of Possibilities | GET YOURS

Customer Service (Servicio al Cliente): 1-800-420-5981

Payment Address: Retail Services PO Box 5238 Carol Stream IL 60197-5238
Mail Billing Inquiries to: Retail Services PO Box 15521 Wilmington DE 19850-5521
Days in Billing Cycle: 30

Statement Date: 05/03/2005

Account Summary — Account Number: 7021-2701-0278-5762

PAYMENT DUE DATE	TOTAL MINIMUM PAYMENT DUE	NEW BALANCE	PAST DUE AMOUNT	AVAILABLE CREDIT
05/28/2005	$252.00	$2,898.85	$186.00	$0.00

FOR $15 YOU CAN TAKE ADVANTAGE OF OUR PAY BY PHONE PROGRAM. AVOID FURTHER COLLECTION ACTIVITY. CALL 1-800-420-5981

Please see reverse for important disclosures, including grace period information.

Transactions

Transaction Date	Transaction Detail	Promo. Type/Credit Plan	Amount
04/04/2005	Previous Balance		$2,807.49
04/28/2005	Late Charge Assessment		$35.00
05/03/2005	Billed Finance Charges		$56.36
05/03/2005	New Balance		$2,898.85

Finance Charge Summary

Promotion Type/Credit Plan	Purchase Date	Promotion Expiration Date	Previous Balance	Average Daily Balance	Variable Daily Periodic Rate	Corresponding APR	ANNUAL PERCENTAGE RATE (APR)	FINANCE CHARGES at Periodic Rate	Deferred FINANCE CHARGES	New Balance	Minimum Payment Due
Regular Purchase 04001-01	N/A	N/A	$1,691.76	$1,708.09	0.06616%	24.15%	24.15%	$33.90	N/A	$1,725.66	$231.86
Regular Purchase 04005-02	N/A	N/A	$601.05	$606.85	0.06616%	24.15%	24.15%	$12.04	N/A	$613.09	$20.14
Regular Purchase 00007-03	N/A	N/A	$322.72	$332.84	0.06616%	24.15%	24.15%	$6.58	N/A	$364.30	$.00
Regular Purchase 04010-04	N/A	N/A	$191.96	$193.81	0.06616%	24.15%	24.15%	$3.84	N/A	$195.80	$.00

STMT173H (04/04)

Page 1 of 1 05030030124

Please return coupon below with your payment.

BEST BUY CO., INC.

Customer Service (Servicio al Cliente): 1-800-420-5981

ACCOUNT NUMBER	NEW BALANCE	PAYMENT DUE DATE	RECOMMENDED MAIL DATE	TOTAL MINIMUM PAYMENT DUE
7021-2701-0278-5762	$2,898.85	05/28/2005	05/19/2005	$252.00

AMOUNT ENCLOSED $

FRANCIS J LOPEZ
PO BOX 219
DESTIN FL 32540-0219

00169

Please complete using black or blue ink only. Make checks payable to Retail Services. Include your account number on your check or money order.

RETAIL SERVICES
PO BOX 5238
CAROL STREAM IL 60197-5238

0 00289885000252000007021270102785762001694

BEST BUY
Thousands of Possibilities | GET YOURS

Customer Service (Servicio al Cliente): 1-800-420-5981

Payment Address: Retail Services PO Box 5238 Carol Stream IL 60197-5238
Mail Billing Inquiries to: Retail Services PO Box 15521 Wilmington DE 19850-5521
Days in Billing Cycle: 30

Statement Date: 05/03/2005

Account Summary

Account Number: 7021-2701-0278-5762

PAYMENT DUE DATE	TOTAL MINIMUM PAYMENT DUE	NEW BALANCE	PAST DUE AMOUNT	AVAILABLE CREDIT
05/28/2005	$252.00	$2,898.85	$186.00	$0.00

FOR $15 YOU CAN TAKE ADVANTAGE OF OUR PAY BY PHONE PROGRAM. AVOID FURTHER COLLECTION ACTIVITY. CALL 1-800-420-5981

Please see reverse for important disclosures, including grace period information.

Transactions

Transaction Date	Transaction Detail	Promo. Type/Credit Plan	Amount
04/04/2005	Previous Balance		$2,807.49
04/28/2005	Late Charge Assessment		$35.00
05/03/2005	Billed Finance Charges		$56.36
05/03/2005	New Balance		$2,898.85

Finance Charge Summary

Promotion Type/ Credit Plan	Purchase Date	Promotion Expiration Date	Previous Balance	Average Daily Balance	Variable Daily Periodic Rate	Corresponding APR	ANNUAL PERCENTAGE RATE (APR)	FINANCE CHARGES at Periodic Rate	Deferred FINANCE CHARGES	New Balance	Minimum Payment Due
Regular Purchase 04001-01	N/A	N/A	$1,691.76	$1,708.09	0.06616%	24.15%	24.15%	$33.90	N/A	$1,725.66	$231.86
Regular Purchase 04005-02	N/A	N/A	$601.05	$606.85	0.06616%	24.15%	24.15%	$12.04	N/A	$613.09	$20.14
Regular Purchase 00007-03	N/A	N/A	$322.72	$332.84	0.06616%	24.15%	24.15%	$6.58	N/A	$364.30	$.00
Regular Purchase 04010-04	N/A	N/A	$191.96	$193.81	0.06616%	24.15%	24.15%	$3.84	N/A	$195.80	$.00

STMT173H (04/04)

Page 1 of 1 05030030124

Please return coupon below with your payment.

BEST BUY CO., INC.

Customer Service (Servicio al Cliente): 1-800-420-5981

ACCOUNT NUMBER	NEW BALANCE	PAYMENT DUE DATE	RECOMMENDED MAIL DATE	TOTAL MINIMUM PAYMENT DUE
7021-2701-0278-5762	$2,898.85	05/28/2005	05/19/2005	$252.00

AMOUNT ENCLOSED $

FRANCIS J LOPEZ
PO BOX 219
DESTIN FL 32540-0219

00169

Please complete using black or blue ink only.
Make checks payable to Retail Services. Include your account number on your check or money order.

RETAIL SERVICES
PO BOX 5238
CAROL STREAM IL 60197-5238

0

00289885000252000007021270102785762001694

EXHIBIT F

13200504HCSWHL 00150015176690006732635

HOUSEHOLD BANK GOLD MASTERCARD STATEMENT

FRANCIS J LOPEZ

Page 1 of 2

ACCOUNT SUMMARY		PAYMENT SUMMARY		BALANCE SUMMARY		
ACCOUNT NUMBER	5176-6900-0673-2635	OVERLIMIT AMOUNT	$156.19	PREVIOUS BALANCE		$2,046.17
TOTAL CREDIT LIMIT	$2,000	MINIMUM PAYMENT*	$54.00	PAYMENTS/CREDITS	-	$0.00
TOTAL CREDIT LIMIT AVAILABLE	$0	CURRENT PAYMENT DUE*	$210.19	PURCHASES/DEBITS	+	$64.00
CASH CREDIT LIMIT.	$800	PAYMENT DUE DATE	05/06/05			
CASH LIMIT AVAILABLE	$0	PAST DUE AMOUNT	$102.00	FINANCE CHARGE	+	$46.02
STATEMENT DATE	04/13/05	*See reverse side for an explanation of these amounts.		NEW BALANCE	=	$2,156.19

.Cash Credit Limit is a portion of the Total Credit Limit

Household Bank Rewards Summary

Earnings to expire in December 2008 3,913

Previous Earnings	3,913
Earnings	0
Total Earnings	3,913

TRANSACTION SUMMARY

TRAN DATE	POST DATE	TRANSACTION DESCRIPTION	REFERENCE NUMBER	AMOUNT CHARGES	CREDITS
04/07	04/07	LATE CHARGE ASSESSMENT	10000003000000999851700	$35.00	
03/14	03/14	OVERLIMIT CHARGE ASSESSMENT	10000003000000999861100	$29.00	

MAIL PAYMENTS TO:
HOUSEHOLD CREDIT SERVICES
PO BOX 5222
CAROL STREAM IL 60197-5222

QUESTIONS?
24-HOUR CUSTOMER SERVICE
1-800-477-6000
OUTSIDE USA, COLLECT: 1-757-523-3880
TDD HEARING IMPAIRED: 1-800-395-9020
Manage your account online at:
www.householdbank.com

MAIL INQUIRIES TO:
HOUSEHOLD CREDIT SERVICES
PO BOX 81622
SALINAS CA 93912-1622

080370 E 13 0000000300 G STMT38 0 0
PLEASE DETACH AND RETURN BOTTOM PORTION WITH YOUR PAYMENT:
To Assure Proper Credit Please Write Your Account Number On Your Check

Account Number 5176-6900-0673-2635

New Balance $2,156.19
Payment Due Date 05/06/05 Current Payment Due $210.19

Make checks payable to HOUSEHOLD CREDIT SERVICES . Please write your account number on your check. Do not fold, staple or clip. Do not send cash. Please send your payment 7 days prior to the payment due date to ensure timely delivery.

Amount
Enclosed

FRANCIS J LOPEZ
PO BOX 219
DESTIN FL 32540-0219

HOUSEHOLD CREDIT SERVICES
PO BOX 5222
CAROL STREAM IL 60197-5222

517669000673263500021019002156196

13200504HCSWHL 0015002517669000673Z635

HOUSEHOLD BANK GOLD MASTERCARD STATEMENT

FRANCIS J LOPEZ

TRANSACTION SUMMARY

TRAN DATE	POST DATE	TRANSACTION DESCRIPTION	REFERENCE NUMBER	AMOUNT CHARGES	CREDITS

YOUR ACCOUNT IS NOW PAST DUE. PLEASE CALL TODAY TO MAKE YOUR PAYMENT OVER THE PHONE. CALL US AT 800-395-0500.

FINANCE CHARGE CALCULATION

This is a grace account. Grace period information on back.

	Balance Subject To Finance Charge/ Average Daily Balance	Daily Periodic Rate	Days In Billing Cycle	Finance Charges At Periodic Rate	NOMINAL ANNUAL PERCENTAGE RATE
PURCHASES	$2,105.19	.07052%	31	$46.02	25.74%
CASH ADVANCES	$0.00	.00000%	31	$0.00	22.99%

ANNUAL PERCENTAGE RATE**25.740%

**May be higher than Nominal Annual Percentage Rate if statement includes misc. finance charges.

MAIL PAYMENTS TO:
HOUSEHOLD CREDIT SERVICES
PO BOX 5222
CAROL STREAM IL 60197-5222

QUESTIONS?
24-HOUR CUSTOMER SERVICE
1-800-477-6000
OUTSIDE USA, COLLECT: 1-757-523-3880
TDD HEARING IMPAIRED: 1-800-395-9020
Manage your account online at:
www.householdbank.com

MAIL INQUIRIES TO:
HOUSEHOLD CREDIT SERVICES
PO BOX 81622
SALINAS CA 93912-1622

080370 E 13 0000000300 G STMT38 D D

PLEASE DETACH AND RETURN BOTTOM PORTION WITH YOUR PAYMENT:
To Assure Proper Credit Please Write Your Account Number On Your Check

Account Number 5176 6900 0673 2635

New Balance $2,156.19
Payment Due Date 05/06/05 Current Payment Due $210.19

Make checks payable to HOUSEHOLD CREDIT SERVICES . Please write your account number on your check. Do not fold, staple or clip. Do not send cash. Please send your payment 7 days prior to the payment due date to ensure timely delivery.

Amount Enclosed

FRANCIS J LOPEZ
PO BOX 219
DESTIN FL 32540-0219

HOUSEHOLD CREDIT SERVICES
PO BOX 5222
CAROL STREAM IL 60197-5222

51766900067326350002101900215619б

EXHIBIT G

13200505HCSHHL 00150015176690006732635

HOUSEHOLD BANK GOLD MASTERCARD STATEMENT

FRANCIS J LOPEZ

Page 1 of 2

ACCOUNT SUMMARY		PAYMENT SUMMARY		BALANCE SUMMARY		
ACCOUNT NUMBER	5176-6900-0673-2635	OVERLIMIT AMOUNT	$266.91	PREVIOUS BALANCE		$2,156.19
TOTAL CREDIT LIMIT	$2,000	MINIMUM PAYMENT*	$57.00	PAYMENTS/CREDITS	-	$0.00
TOTAL CREDIT LIMIT AVAILABLE	$0	CURRENT PAYMENT DUE*	$323.91	PURCHASES/DEBITS	+	$64.00
CASH CREDIT LIMIT.	$800	PAYMENT DUE DATE	06/07/05			
CASH LIMIT AVAILABLE	$0	PAST DUE AMOUNT	$156.00	FINANCE CHARGE	+	$46.72
STATEMENT DATE	05/13/05	*See reverse side for an explanation of these amounts.		NEW BALANCE	=	$2,266.91

.Cash Credit Limit is a portion of the Total Credit Limit

Household Bank Rewards Summary

Earnings to expire in December 2008 3,913

Previous Earnings	3,913
Earnings	0
Total Earnings	3,913

TRANSACTION SUMMARY

TRAN DATE	POST DATE	TRANSACTION DESCRIPTION	REFERENCE NUMBER	AMOUNT CHARGES	CREDITS
05/06	05/06	LATE CHARGE ASSESSMENT	1000000300000099862810	$35.00	
04/23	04/24	OVERLIMIT CHARGE ASSESSMENT	1000000300000099783930	$29.00	

MAIL PAYMENTS TO:
HOUSEHOLD CREDIT SERVICES
PO BOX 5222
CAROL STREAM IL 60197-5222

QUESTIONS?
24-HOUR CUSTOMER SERVICE
1-800-477-6000
OUTSIDE USA, COLLECT: 1-757-523-3880
TDD HEARING IMPAIRED: 1-800-395-9020
Manage your account online at:
www.householdbank.com

MAIL INQUIRIES TO:
HOUSEHOLD CREDIT SERVICES
PO BOX 81622
SALINAS CA 93912-1622

080370 E 13 0000000300 G STMT38 D D
PLEASE DETACH AND RETURN BOTTOM PORTION WITH YOUR PAYMENT:
To Assure Proper Credit Please Write Your Account Number On Your Check

Account Number 5176-6900-0673-2635

New Balance $2,266.91
Payment Due Date 06/07/05 Current Payment Due $323.91

Make checks payable to HOUSEHOLD CREDIT SERVICES . Please write your account number on your check. Do not fold, staple or clip. Do not send cash. Please send your payment 7 days prior to the payment due date to ensure timely delivery.

Amount Enclosed

FRANCIS J LOPEZ
PO BOX 219
DESTIN FL 32540-0219

HOUSEHOLD CREDIT SERVICES
PO BOX 5222
CAROL STREAM IL 60197-5222

517669000673263500032391002266912

13200505HCSHHL 0015002517669000673Z635

HOUSEHOLD BANK GOLD MASTERCARD STATEMENT

FRANCIS J LOPEZ

TRANSACTION SUMMARY

TRAN DATE	POST DATE	TRANSACTION DESCRIPTION	REFERENCE NUMBER	AMOUNT CHARGES	CREDITS

IF YOU ARE UNABLE TO SEND YOUR PAYMENT TODAY, PLEASE CALL 800-395-0500 TO DISCUSS A REPAYMENT ARRANGEMENT.

FINANCE CHARGE CALCULATION

This is a grace account. Grace period information on back.

	Balance Subject To Finance Charge/ Average Daily Balance	Daily Periodic Rate	Days In Billing Cycle	Finance Charges At Periodic Rate	NOMINAL ANNUAL PERCENTAGE RATE
PURCHASES	$2,208.18	.07052%	30	$46.72	25.74%
CASH ADVANCES	$0.00	.00000%	30	$0.00	22.99%

ANNUAL PERCENTAGE RATE*25.740%

**May be higher than Nominal Annual Percentage Rate if statement includes misc. finance charges.

CARDMEMBER NEWS

We're happy to announce that Household Bank has joined HSBC. See the enclosed materials for more information.

MAIL PAYMENTS TO:
HOUSEHOLD CREDIT SERVICES
PO BOX 5222
CAROL STREAM IL 60197-5222

QUESTIONS?
24-HOUR CUSTOMER SERVICE
1 800 177 6000
OUTSIDE USA, COLLECT: 1-757 523 3890
TDD HEARING IMPAIRED: 1-800-395-9020
Manage your account online at:
www.householdbank.com

MAIL INQUIRIES TO:
HOUSEHOLD CREDIT SERVICES
PO BOX 81622
SALINAS CA 93912 1622

080370 E 13 0000000300 G STMT38 D 0

PLEASE DETACH AND RETURN BOTTOM PORTION WITH YOUR PAYMENT:
To Assure Proper Credit Please Write Your Account Number On Your Check

Account Number 5176-6900-0673-2635

New Balance $2,266.91
Payment Due Date 06/07/05 Current Payment Due $323.91

Make checks payable to HOUSEHOLD CREDIT SERVICES . Please write your account number on your check. Do not fold, staple or clip. Do not send cash. Please send your payment 7 days prior to the payment due date to ensure timely delivery.

Amount Enclosed

FRANCIS J LOPEZ
PO BOX 219
DESTIN FL 32540-0219

HOUSEHOLD CREDIT SERVICES
PO BOX 5222
CAROL STREAM IL 60197-5222

5176690006732635000323910022669 12

EXHIBIT H

13200506HCSWHL 001500151766900067326 35

HSBC GOLD MASTERCARD STATEMENT
FRANCIS J LOPEZ

ACCOUNT SUMMARY		PAYMENT SUMMARY		BALANCE SUMMARY		
ACCOUNT NUMBER	5176-6900-0673-2635	OVERLIMIT AMOUNT	$295.95	PREVIOUS BALANCE		$2,266.91
TOTAL CREDIT LIMIT	$2,000	MINIMUM PAYMENT*	$58.00	PAYMENTS/CREDITS	-	$100.00
TOTAL CREDIT LIMIT AVAILABLE	$0	CURRENT PAYMENT DUE*	$353.95	PURCHASES/DEBITS	+	$79.00
		PAYMENT DUE DATE	07/08/05			
CASH CREDIT LIMIT.	$800	PAST DUE AMOUNT	$163.00			
CASH LIMIT AVAILABLE	$0			FINANCE CHARGE	+	$50.04
STATEMENT DATE	06/13/05	*See reverse side for an explanation of these amounts.		NEW BALANCE	=	$2,295.95

.Cash Credit Limit is a portion of the Total Credit Limit

HSBC Rewards Summary

Earnings to expire in December 2008 3,913

Previous Earnings	3,913
Earnings	0
Total Earnings	3,913

TRANSACTION SUMMARY

TRAN DATE	POST DATE	TRANSACTION DESCRIPTION	REFERENCE NUMBER	AMOUNT CHARGES	AMOUNT CREDITS
05/17	05/17	CHECK BY PHONE PAYMENT	0000000000005177983113S		$50.00
06/01	06/06	MISC FEE REVERSAL	1297-02JUN05 (01-01)		$50.00
06/07	06/07	LATE CHARGE ASSESSMENT	10000003000000999851610	$35.00	
05/17	05/17	CHECK BY PHONE FEE (ACH)	00000000000051779831136	$15.00	
05/23	05/23	OVERLIMIT CHARGE ASSESSMENT	10000003000000999823680	$29.00	

MAIL PAYMENTS TO:
HSBC CARD SERVICES
PO BOX 4155
CAROL STREAM IL 60197-4155

QUESTIONS?
24-HOUR CUSTOMER SERVICE
1-800-477-6000
OUTSIDE USA, COLLECT: 1-757-523-3880
TDD HEARING IMPAIRED: 1-800-395-9020
Manage your account online at:
www.hsbccreditcard.com

MAIL INQUIRIES TO:
HSBC CARD SERVICES
PO BOX 81622
SALINAS CA 93912-1622

080370 E 13 0000000300 C STMT38 D D
PLEASE DETACH AND RETURN BOTTOM PORTION WITH YOUR PAYMENT:
To Assure Proper Credit Please Write Your Account Number On Your Check

Account Number 5176-6900-0673-2635

New Balance $2,295.95
Payment Due Date 07/08/05 Current Payment Due $353.95

Make checks payable to HSBC CARD SERVICES . Please write your account number on your check. Do not fold, staple or clip. Do not send cash. Please send your payment 7 days prior to the payment due date to ensure timely delivery.

Amount Enclosed

FRANCIS J LOPEZ
PO BOX 219
DESTIN FL 32540-0219

HSBC CARD SERVICES
PO BOX 4155
CAROL STREAM IL 60197-4155

5176690006732635000353950022959S0

132005O6HCSHHL 0015002517669000067326.35

HSBC GOLD MASTERCARD STATEMENT
FRANCIS J LOPEZ

TRANSACTION SUMMARY

TRAN DATE	POST DATE	TRANSACTION DESCRIPTION	REFERENCE NUMBER	AMOUNT CHARGES	CREDITS

IF YOU ARE UNABLE TO SEND YOUR PAYMENT TODAY, PLEASE CALL 800-395-0500 TO DISCUSS A REPAYMENT ARRANGEMENT.

FINANCE CHARGE CALCULATION
This is a grace account. Grace period information on back.

	Balance Subject To Finance Charge/ Average Daily Balance	Daily Periodic Rate	Days In Billing Cycle	Finance Charges At Periodic Rate	NOMINAL ANNUAL PERCENTAGE RATE
PURCHASES	$2,266.97	.07121%	31	$50.04	25.99%
CASH ADVANCES	$0.00	.00000%	31	$0.00	22.99%

ANNUAL PERCENTAGE RATE**25.990%

**May be higher than Nominal Annual Percentage Rate if statement includes misc. finance charges.

MAIL PAYMENTS TO:
HSBC CARD SERVICES
PO BOX 4155
CAROL STREAM IL 60197-4155

QUESTIONS?
24-HOUR CUSTOMER SERVICE
1-800-477-6000
OUTSIDE USA, COLLECT: 1-757-523-3880
TDD HEARING IMPAIRED: 1-800-395-9020
Manage your account online at:
www.hsbccreditcard.com

MAIL INQUIRIES TO:
HSBC CARD SERVICES
PO BOX 81622
SALINAS CA 93912-1622

080370 E 13 0000000300 G STMT38 D D
PLEASE DETACH AND RETURN BOTTOM PORTION WITH YOUR PAYMENT:
To Assure Proper Credit Please Write Your Account Number On Your Check

Account Number 5176-6900-0673-2635

New Balance $2,295.95
Payment Due Date 07/08/05 Current Payment Due $353.95

Make checks payable to HSBC CARD SERVICES . Please write your account number on your check. Do not fold, staple or clip. Do not send cash. Please send your payment 7 days prior to the payment due date to ensure timely delivery.

Amount
Enclosed

FRANCIS J LOPEZ
PO BOX 219
DESTIN FL 32540-0219

HSBC CARD SERVICES
PO BOX 4155
CAROL STREAM IL 60197-4155

51766900067326350003539500229595O

EXHIBIT I

RECEIPT 27932

Daily News

Racetrack Road
Walton Beach. Fla 32549
P.O. Box 2949

DATE 5-17-05

RECEIVED FROM ~~Diaz~~ Lopez, Francis

$ 97.39

AMOUNT (pst due + 3 mos)

FOR Circ Acct # 112331

THANK YOU

BY [signature]

ACCOUNT		HOW PAID	
AMT. OF ACCOUNT		CASH	97 39
AMT. PAID		CHECK	
BALANCE DUE		MONEY ORDER	

EXHIBIT J

Customer Service (850) 729-4700 | Crestview Area (850) 682-3017 | Navarre/Santa Rosa Beach Area (850) 244-5197

SERVICE ADDRESS 310 SAND MYRTLE TRL

ACCOUNT NUMBER	CYCLE	BILL DATE	DELINQUENT DATE
232079-74786	91-13	4/20/05	5/16/05

Last Bill Amount	171.70
Payments	.00
Adjustments	.00
Unpaid Balance	171.70

Rate Class : RESIDENTIAL
Last payment amount/date: 253.66 3/18/05

	Service Period		Days	Meter Number	Meter Readings	
GS	3/18/05	4/19/05	32	J466820	Present	2125
					Previous -	2027
					Consumption	98

-----Calculations-----

Consumption	98
Meter Mult.	X 1.006
Adj Cons	98.58
BTU Factor	X 1.031
Bill Therms	101.64

Service		Therm	Charge	Total
	Unpaid Balance			171.70
GS	CUSTOMER CHARGE		10.00	10.00
GS	COST OF GAS CHARGE	101.69	66.45	66.45
GS	DELIVERY CHARGE	101.69	44.35	44.35
	LATE CHARGE	4/15/05	14.86	14.86
	Total Amount Due			$307.36

Bal as of today
5/12 135.66
#

Online at okaloosagas.com

####### R E M E M B E R #######
PAYMENTS RECEIVED ON WEEKENDS, HOLIDAYS OR AFTER 3PM ON REGULAR BUSINESS DAYS ARE POSTED THE - FOLLOWING - BUSINESS DAY

Your Rates Per Therm Used:
Cost of Gas .6535
Delivery Charge .4361

CUT OFF INFORMATION

Your gas service is subject to disconnection if the Unpaid Balance listed on this statement is not paid within fifteen days of the above bill date. You will not receive further notice. If you have any questions please contact your nearest Okaloosa Gas office prior to the disconnect date.

A 10% late charge will be added to your account if current charges have not been paid by the delinquent date. This bill is due when rendered.

EXHIBIT K

1831

Customer Service	Crestview Area	Navarre/Santa Rosa Beach Area
(850) 729-4700	(850) 682-3017	(850) 244-5197

SERVICE ADDRESS 310 SAND MYRTLE TRL

ACCOUNT NUMBER	CYCLE	BILL DATE	DELINQUENT DATE
232079-74786	91-13	6/21/05	7/18/05

Last Bill Amount	82.74
Payments	82.74-
Adjustments	.00
Unpaid Balance	.00

Rate Class : RESIDENTIAL
Last payment amount/date: 82.74 6/15/05

	Service Period		Days	Meter Number	Meter Readings		-----Calculations-----	
GS	5/16/05	6/15/05	30	J466820	Present	2212	Consumption	23
					Previous -	2189	Meter Mult.	X 1.006
					Consumption	23	Adj Cons	23.13
							BTU Factor	X 1.033
							Bill Therms	23.90

Service		Therm	Charge	Total
GS CUSTOMER CHARGE			10.00	10.00
GS COST OF GAS CHARGE		23.92	15.63	15.63
GS DELIVERY CHARGE		23.92	10.43	10.43
LATE CHARGE	6/13/05		8.27	8.27
	Total Amount Due			$44.33

Online at okaloosagas.com

####### REMEMBER #######
PAYMENTS RECEIVED ON WEEKENDS, HOLIDAYS OR AFTER 3PM ON REGULAR BUSINESS DAYS ARE POSTED THE - FOLLOWING - BUSINESS DAY

Your Rates Per Therm Used:
Cost of Gas .6535
Delivery Charge .4361

A 10% late charge will be added to your account if current charges have not been paid by the delinquent date. This bill is due when rendered.

EXHIBIT L

Application Suite

Search Results

[redacted]

Baskets

My Search Results

My Search Results

Policy No.	Doc...	Trans	Recip	Incoming	Report	Version
37287380-3	BILL	BILL	INS	/ /	POLBILLS	05-24-2005 : 04:03:
37287380-3	BILL	BILL	INS	/ /	POLBILLS	05-09-2005 : 07:16:
37287380-3	BIL_	BILL	INS	/ /	POLBILLS	03-24-2005 : 03:34:

Commands

View

Prod [Ownership Workbench - Processing] - 37287380-5 (Named Insured: Francis J Lopez)

Policy View Tools Options Help

Policy: 37287380-5

Actions:

Process Search Warning Print

PROGRESSIVE DIRECT

Payment Sched. | Transactions | Payments | Communications

Summary

History

Policy

Driver

Vehicle

Coverages

Program

Claims

Notes

ACC

Addl Systems

Transactions

Process Date	Transaction	Amount $	Description	Detail
12/13/2004	Renewal	1,028.00	Inception	02/08/2005
12/16/2004	Endorsement	-27.00	Endorse Effective Date	02/08/2005
01/23/2005	Invoice	203.20	Due Date	02/08/2005
02/08/2005	Payment	-208.60	Postmark Date	02/03/2005
02/20/2005	Invoice	197.80	Due Date	03/08/2005
03/13/2005	Late Fee	5.00		
03/14/2005	Suspend Billing and Follow-up	0.00	Operator	SYSCNPCN
03/14/2005	Cancel Notice	202.80	Cancel Effective Date	03/30/2005
03/16/2005	Payment - One Time Credit Card - Internet	-202.80	Postmark Date	03/16/2005
03/16/2005	Rescind Nonpay Cancel	0.00		
03/16/2005	Resume Billing and Follow-up	0.00	Operator	SYSTEM
03/23/2005	Invoice	203.20	Due Date	04/08/2005
04/13/2005	Late Fee	5.00		

(•) All ( ) DEC Related ( ) DEC Related - By Term

PROD | Florida | Direct | Aligned Auto 4.0 | Rate Revision 06/2005 | Inquiry | 6 Month

OWB - PrintScreen At: 02:43:26 PM On: 01/18/06 By: Nancy H Ashmore

Application Suite

Search Results

Baskets

My Search Results

Commands

View

Policy No.	Doc...	Trans	Recip	Incoming	Report	Version
37287380-3	BILL	BILL	INS	/ /	POLBILLS	05-24-2005 : 04:03:4
37287380-3	BILL	BILL	INS	/ /	POLBILLS	05-09-2005 : 07:16:3
37287380-3	BILL	BILL	INS	/ /	POLBILLS	03-24-2005 : 03:34:5

Prod [Ownership Workbench - Processing] - 37287380-5 (Named Insured: Francis J Lopez)

Policy View Tools Options Help

Policy: 37287380-5

Actions:

Process Search Warning Print

PROGRESSIVE DIRECT

Payment Sched. | **Transactions** | Payments | Communications

Summary
History
Policy
Driver
Vehicle
Coverages
Program
Claims
Notes
ACC
Addl Systems

Transactions

Process Date	Transaction	Amount $	Description	Detail
04/14/2005	Cancel Notice	208.20	Cancel Effective Date	04/30/2005
04/15/2005	Suspend Billing and Follow-up	0.00	Operator	SYSCNPCN
05/02/2005	Payment - One Time ACH - OWB	-208.20	Postmark Date	05/02/2005
05/04/2005	Cancel-Prorate	-552.00	Cancel Effective Date	04/30/2005
05/04/2005	Resume Billing and Follow-up	0.00	Operator	SYSPICAN
05/04/2005	Final Cancel	0.00	Due Date	04/08/2005
05/08/2005	Reinstatement	552.00	Reinstate Effective Date	04/30/2005
05/08/2005	Invoice	203.20	Due Date	05/24/2005
05/08/2005	Reinstatement Notice	0.00	Reinstate Effective Date	04/30/2005
05/23/2005	Invoice	406.40	Due Date	06/08/2005
06/13/2005	Late Fee	5.00		
06/14/2005	Cancel Notice	411.40	Cancel Effective Date	06/30/2005
06/15/2005	Suspend Billing and Follow-up	0.00	Operator	SYSCNPCN

(•) All ( ) DEC Related ( ) DEC Related - By Term

PROD | Florida | Direct | Aligned Auto 4.0 | Rate Revision 06/2005 | Inquiry | 6 Month

OWB - PrintScreen At: 02:43:44 PM On: 01/18/06 By: Nancy H Ashmore

Application Suite

Search Results

[redacted]

Baskets

My Search Results

Commands

View

	Policy No.	Doc...	Trans	Recip	Incoming	Report	Version
	37287380-3	BILL	BILL	INS	/ /	POLBILLS	05-24-2005 : 04:03:
	37287380-3	BILL	BILL	INS	/ /	POLBILLS	05-09-2005 : 07:16:
	37287380-3	BILL	BILL	INS	/ /	POLBILLS	03-24-2005 : 03:34:

Prod [Ownership Workbench - Processing] - 37287380-5 [Named Insured: Francis J Lopez]

Policy View Tools Options Help

Policy: 37287380-5

Actions:

Process Search Warning Print

PROGRESSIVE DIRECT

Summary | History | Policy | Driver | Vehicle | Coverages | Program | Claims | Notes | ACC | Addl Systems

Payment Sched. | Transactions | Payments | Communications

Transactions

Process Date	Transaction	Amount $	Description	Detail
06/15/2005	Suspend Billing and Follow-up	0.00	Operator	SYSCNPCN
06/16/2005	Payment - One Time Credit Card - Internet	-411.40	Postmark Date	06/16/2005
06/16/2005	Rescind Nonpay Cancel	0.00		
06/16/2005	Resume Billing and Follow-up	0.00	Operator	SYSTEM
07/01/2005	Bill Plan Change	0.00	From 5 Pay, 20.00% Down, Monthly	SYSPIAC
07/01/2005	Renewal	925.00	Inception	08/08/2005
07/24/2005	Invoice	157.20	Due Date	08/08/2005
08/08/2005	Suspend Billing and Follow-up	0.00	Operator	SYSRNLPS
08/09/2005	Resume Billing and Follow-up	0.00	Operator	SYSPICAN
08/09/2005	Write Off - Installment Fee - Automatic	-3.00		
08/09/2005	Cancel-Lapse	-925.00	Cancel Effective Date	08/08/2005
08/22/2005	Payment - One Time ACH - Internet	-157.20	Postmark Date	08/22/2005
08/22/2005	Hold Disbursements	0.00	Operator	SYSRNCSH

(•) All ( ) DEC Related ( ) DEC Related - By Term

PROD | Florida | Direct | Aligned Auto 4.0 | Rate Revision 06/2005 | Inquiry | 6 Month

OWB - PrintScreen At: 02:43:58 PM On: 01/18/06 By: Nancy H Ashmore

Application Suite

Search Results

Baskets

My Search Results

My Search Results

Commands

View

Policy No.	Doc...	Trans	Recip	Incoming	Report	Version
37287380-3	BILL	BILL	INS	/ /	POLBILLS	05-24-2005 : 04:03:
37287380-3	BILL	BILL	INS	/ /	POLBILLS	05-09-2005 : 07:16:
37287380-3	BILL	BILL	INS	/ /	POLBILLS	03-24-2005 : 03:34:

Prod [Ownership Workbench - Processing] - 37287380-5 (Named Insured: Francis J Lopez)

Policy View Tools Options Help

Policy: 37287380-5

Actions:

Process Search Warning Print

PROGRESSIVE DIRECT

Payment Sched. | Transactions | Payments | Communications

Summary | History | Policy | Driver | Vehicle | Coverages | Program | Claims | Notes | ACC | Addl Systems

Transactions

Process Date	Transaction	Amount $	Description	Detail
08/22/2005	Hold Disbursements	0.00	Operator	SYSRNCSH
08/23/2005	Reinstatement	925.00	Reinstate Effective Date	08/08/2005
08/23/2005	Resume Disbursements	0.00	Operator	SYSRNCSH
08/23/2005	Reverse Write Off - Installment Fee - Automatic	3.00		
08/23/2005	Invoice	157.16	Due Date	09/08/2005
09/09/2005	Reminder Notice	157.16		
09/13/2005	Late Fee	5.00		
09/19/2005	Cancel Notice	162.16	Cancel Effective Date	10/05/2005
09/20/2005	Suspend Billing and Follow-up	0.00	Operator	SYSCNPCN
09/23/2005	Payment	-157.16	Postmark Date	09/20/2005
09/23/2005	Rescind Nonpay Cancel	0.00		
09/23/2005	Resume Billing and Follow-up	0.00	Operator	SYSTEM
09/23/2005	Invoice	162.16	Due Date	10/09/2005

All | DEC Related | DEC Related - By Term

PROD | Florida | Direct | Aligned Auto 4.0 | Rate Revision 06/2005 | Inquiry | 6 Month

OWB - PrintScreen At: 02:44:08 PM On: 01/18/06 By: Nancy H Ashmore

Application Suite

Prod [Ownership Workbench - Processing] - 37287380-5 [Named Insured: Francis J Lopez]

Policy View Tools Options Help

Policy: 37287380-5 Actions:

Process Search Warning Print

PROGRESSIVE DIRECT

Summary | History | Policy | Driver | Vehicle | Coverages | Program | Claims | Notes | ACC | Addl Systems

Payment Sched. | Transactions | Payments | Communications

Transactions

Process Date	Transaction	Amount $	Description	Detail
09/23/2005	Invoice	162.16	Due Date	10/09/2005
10/10/2005	Reminder Notice	162.16		
10/14/2005	Late Fee	5.00		
10/20/2005	Cancel Notice	167.16	Cancel Effective Date	11/05/2005
10/21/2005	Suspend Billing and Follow-up	0.00	Operator	SYSCNPCN
10/21/2005	Payment - One Time ACH - Internet	-167.16	Postmark Date	10/21/2005
10/21/2005	Rescind Nonpay Cancel	0.00		
10/21/2005	Resume Billing and Follow-up	0.00	Operator	SYSTEM
10/23/2005	Invoice	157.16	Due Date	11/08/2005
10/25/2005	Endorsement - Change Insured Address	0.00		
10/25/2005	Endorsement	0.00	Endorse Effective Date	10/25/2005
11/09/2005	Reminder Notice	157.16		
11/13/2005	Late Fee	5.00		

(•) All ( ) DEC Related ( ) DEC Related - By Term Details...

PROD | Florida | Direct | Aligned Auto 4.0 | Rate Revision 06/2005 | Inquiry | 6 Month

OWB - PrintScreen At: 02:55:11 PM On: 01/18/06 By: Nancy H Ashmore

Application Suite

Prod: [Ownership Workbench - Processing] - 37287380-5 (Named Insured: Francis J Lopez)

Policy View Tools Options Help

Policy: 37287380-5 Actions:

Process Search Warning Print

PROGRESSIVE

Payment Sched. | Transactions | Payments | Communications

Summary | History | Policy | Driver | Vehicle | Coverages | Program | Claims | Notes | ACC | Addl Systems

Transactions

Process Date	Transaction	Amount $	Description	Detail
11/13/2005	Late Fee	5.00		
11/20/2005	Suspend Billing and Follow-up	0.00	Operator	SYSCNPCN
11/20/2005	Cancel Notice	162.16	Cancel Effective Date	12/06/2005
12/01/2005	Payment - One Time Credit Card - Internet	-162.16	Postmark Date	12/01/2005
12/01/2005	Rescind Nonpay Cancel	0.00		
12/01/2005	Resume Billing and Follow-up	0.00	Operator	SYSCNREI
12/01/2005	Invoice	157.16	Due Date	12/17/2005
12/18/2005	Reminder Notice	157.16		
12/22/2005	Late Fee	5.00		
12/23/2005	Invoice	319.32	Due Date	01/08/2006
01/04/2006	Renewal	954.00	Inception	02/08/2006
01/09/2006	Reminder Notice	319.32		
01/13/2006	Late Fee	5.00		

All | DEC Related | DEC Related - By Term

PROD | Florida | Direct | Aligned Auto 4.0 | Rate Revision 06/2005 | Inquiry | 6 Month

Start | Prod [O... | Prod Owne... | POWR (N... | Workspace... | Highway H... | Application ... 02:55 PM

OWB - PrintScreen At: 02:55:21 PM On: 01/18/06 By: Nancy H Ashmore

EXHIBIT M

ACCOUNT NUMBER	PURCHASE LIMIT	CASH ADVANCE LIMIT
77-917-6550-1	300	50
	PURCHASE AVAILABILITY 0	CASH AVAILABILITY 50

SEND INQUIRIES TO: CREDIT CARD [redacted]
P.O. BOX 9151
DES MOINES, IA 50368-9151
TEXACO CARDHOLDERS CALL (1-800-839-2267)
SHELL CARDHOLDERS CALL (1-800-490-9119)

TRANS. DATE	REFERENCE NUMBER	CARD NUMBER	TRANSACTION LOCATION/DESCRIPTION	INVOICE NUMBER	AMOUNT (CR=CREDIT)
05-06			PAYMENT - THANK YOU		20.00CR
05-08	129587007748	8001	1009 HWY 98 DESTIN FL	1513571	60.00
			TOTAL CARD 8001		60.00**

#1619 35.00

S24016 Rev. 04/04 Prt. (04/05)

YOUR SHELL CARD JUST GOT BETTER! IT CAN NOW BE ACCEPTED AT PARTICIPATING JIFFY LUBE LOCATIONS!

PREVIOUS BALANCE	PAYMENTS/CREDITS	PURCHASES/DEBITS	NEW CASH ADVANCES	FINANCE CHARGE	LATE FEE	NEW BALANCE
279.50	20.00	60.00		4.87	.00	324.37

CLOSING DATE	ANNUAL PERCENTAGE RATE	TO AVOID ADDITIONAL FINANCE CHARGE, PAYMENT OF NEW BALANCE MUST BE RECEIVED BY:	OVERLIMIT AMOUNT	MINIMUM PAYMENT DUE
05-11-05	20.74%	06-05-05	24.37	34.37

SCHEDULE OF FINANCE CHARGES

	PERIODIC RATE (DAILY*)	CORRESPONDING APR	MINIMUM PERIODIC FINANCE CHARGE	BALANCE SUBJECT TO FINANCE CHARGE	PERIODIC RATE FINANCE CHARGE		DAYS IN LAST CYCLE
PURCHASES	.05682%	20.74%	$1.50	285.70	4.87		30
CASH ADVANCES	.05682%	20.74%					

NOTICE: SEE REVERSE SIDE FOR IMPORTANT INFORMATION. PLEASE KEEP THIS PORTION FOR YOUR RECORDS

A018491 1 TX/SH

EXHIBIT N

'7-917-6550-1 | 300 | 50

PURCHASE AVAILABILITY	[redacted] AVAILABILITY
0	0

P.O. BOX 9151
DES MOINES, IA 5[redacted]151
TEXACO CARDHOLD[redacted]CALL (1-800-839-2267)
SHELL CARDHOLDERS CALL (1-800-490-9119)

TRANS. DATE	REFERENCE NUMBER	CARD NUMBER	TRANSACTION LOCATION/DESCRIPTION	INVOICE NUMBER	AMOUNT (CR=CREDIT)

OVERSIGHT IN PUTTING YOUR PAYMENT IN THE MAIL? CALL 1-800-932-6728 TO PAY BY CHECK OVER THE PHONE 24 HOURS A DAY. HAVE YOUR CHECKBOOK READY WHEN YOU CALL.

PREVIOUS BALANCE	PAYMENTS/CREDITS	PURCHASES/DEBITS	NEW CASH ADVANCES	FINANCE CHARGE	LATE FEE	NEW BALANCE
324.37	.00	.00		5.83	20.00	350.20

CLOSING DATE	ANNUAL PERCENTAGE RATE	TO AVOID ADDITIONAL FINANCE CHARGE, PAYMENT OF NEW BALANCE MUST BE RECEIVED BY:	OVERLIMIT AMOUNT	MINIMUM PAYMENT DUE
6-11-05	20.99%	07-06-05	50.20	60.20

HEDULE OF FINANCE CHARGES

	PERIODIC RATE (DAILY*)	CORRESPONDING APR	MINIMUM PERIODIC FINANCE CHARGE	BALANCE SUBJECT TO FINANCE CHARGE	PERIODIC RATE FINANCE CHARGE		DAYS IN LAST CYCLE
RCHASES	.05750%	20.99%	$1.50	327.07	5.83		31
SH ADVANCES	.05750%	20.99%					

TICE: SEE REVERSE SIDE FOR IMPORTANT INFORMATION. PLEASE KEEP THIS PORTION FOR YOUR RECORDS

018283 1 TX/SH

EXHIBIT O

WESTERN EXPRESS, INC.
ISHAM B. BRADLEY #5075
7135 Centennial Place
Nashville, Tennessee 37209
Telephone: (615) 259-9920
Facsimile: (615) 259-9150

ROBBINS & KEEHN, APC
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Telephone (619)232-1700

Attorneys for Defendant WESTERN EXPRESS, INC.

UNITED STATES BANKRUPTCY COURT

SOUTHERN DISTRICT OF CALIFORNIA

SAN DIEGO DIVISION

In Re:	CASE NO. 05-05926-PBINV
FRANCIS J. LOPEZ,	**Involuntary Chapeter 7**
Alleged Debtor	**MOTION TO DISMISS OR TRANSFER INVOLUNTARY PETITION; DECLARATION OF FRANCIS J. LOPES**

AFFIDAVIT OF WAYNE WISE

COMES now Wayne Wise does depose and state as follows:

Attached hereto is a true and correct copy of a promissary note dated June 16, 2004 from Francis and Madeline Lopez to me. Francis and Madeline Lopez are still indebted to me under the provisions of this note.

Further this deponent sayeth not.

Wayne Wise

Subscribed and sworn before me this 27 day of October, 2005.

Notary Public

My Commission Expires: 5/28/06

PROMISSORY NOTE

$15,000.00

Nashville, Tennessee

June 16, 2004

FOR VALUE RECEIVED, the undersigned hereby promises to pay to the order of Wayne M. Wise the principal sum of fifteen thousand Dollars ($15,000.00), on the following terms: on sale or refinance of maker's residence on 310 Sand Myrtle Trail, Destin, FL or not later than one year from date hereof, whichever occurs earlier, with interest at the rate of six percent (6%) per annum.

In the event this note is placed in the hands of an attorney for collection or for enforcement or protection of the security, the makers and any endorsers hereof agree to pay a reasonable attorney's fee and all court and other costs.

The makers of any endorsements hereof agree to pay reasonable attorneys fee and all court and other costs.

It is further agreed that if suit is instituted against the maker(s), that in addition to any other jurisdiction, suit may be instituted and maintained in any court of competent jurisdiction in Davidson County, Tennessee. This note, in its making and in its performance shall be governed by and subject to the laws of the State of Tennessee.

All notice of honor, demand, and protest and consents to any extensions are hereby waived. All exemptions are to be waived.

Makers:

Francis Lopez
SSN: 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

Madeleine Lopez
310 Sand Myrtle Trail
Destin, FL 32541
telephone: 850-650-8341
mobile: 760-214-1955 mobile
fax: 850-269-1034

EXHIBIT P

UNITED STATES BANKRUPTCY COURT

SOUTHERN DISTRICT OF CALIFORNIA

JUDGE PETER W. BOWIE, PRESIDING

IN THE MATTER OF: FRANCIS J. LOPEZ, DEBTOR.	CASE NO. 05-05926-PB7 (INVOLUNTARY)

STATUS CONFERENCE ON INVOLUNTARY PETITION AND ANSWER (CONTINUED FROM MAY 1, 2006)

REPORTER'S TRANSCRIPT OF PROCEEDINGS

SAN DIEGO, CALIFORNIA

THURSDAY, MAY 4, 2006

U.S. BANKRUPTCY COURT DEPARTMENT NO. 4 325 WEST "F" STREET SAN DIEGO, CALIFORNIA 92101	FEDERAL COURT REPORTERS BY: DIANE BERGER POST OFFICE BOX 60583 SAN DIEGO, CALIFORNIA 92166 TELEPHONE: (619) 223-6082

APPEARANCES

FOR LOPEZ: M. JONATHAN HAYES, ESQ.
LAW OFFICE OF J. JONATHAN HAYES
21800 OXNARD STREET, SUITE 840
WOODLAND HILLS, CALIFORNIA 91367
TELEPHONE: (818) 710-3656

FOR STANLY: L. SCOTT KEEHN, ESQ.
ROBBINS AND KEEHN, A P.C.
530 "B" STREET, SUITE 2400
SAN DIEGO, CALIFORNIA 92101
TELEPHONE: (619) 232-1700

MR. HAYES: WELL, BECAUSE I HAVEN'T RECEIVED A SINGLE DOCUMENT FROM ANY OF THESE SUBPOENAS, AND I WOULD LIKE TO SEE WHAT -- I MEAN, I'VE JUST HEARD TODAY NOW THAT THERE'S ALL THIS EVIDENCE ABOUT WHICH CREDITORS AREN'T REALLY CREDITORS.

I'LL FILE A MOTION FOR SUMMARY JUDGMENT. HE HAS SEVERAL WEEKS TO RESPOND THEN, HE'LL GET HIS TRANSCRIPTS, AND HE CAN RESPOND, AND WE'LL HAVE A HEARING DATE. AND THE THING I WAS HOPING WAS THAT WE DON'T HAVE THE HEARING DATE IN LATE JUNE AND THEN SET IT FOR TRIAL TWO MONTHS AFTER THAT BECAUSE IF THERE'S ISSUES -- ON THAT ISSUE, I MEAN, WE CAN DO IT RIGHT AT THE SAME TIME.

THE COURT: WELL, I'M NOT GOING TO DO IT RIGHT AT THE SAME TIME. IF I CAN DECIDE IT BY THE PHASE ONE, THE NUMBER OF CREDITORS, AND DO WE HAVE ENOUGH PETITIONING CREDITORS, THEN I'LL DECIDE THAT AT THAT TIME.

MR. HAYES: WELL, THE SUMMARY JUDGMENT WILL BE AS TO BOTH.

THE COURT: WELL, YOU'RE THE ONE WHO ASKED FOR BIFURCATION --

MR. HAYES: -- A LONG TIME AGO, BY THE WAY.

THE COURT: -- WELL, YOU COULD HAVE BROUGHT YOUR MOTION ANY TIME YOU WANTED TOO.

MR. HAYES: I DON'T THINK THERE'S ANYTHING -- JUST BECAUSE IT'S BEEN BIFURCATED, THERE'S NOTHING TO PREVENT ME FROM FILING THE SUMMARY JUDGMENT AS TO BOTH --

THE COURT: YOU CAN FILE IT, BUT WHETHER WE'LL GET TO IT, I MEAN, OR WHETHER MR. KEEHN IS GOING TO SAY "I'M NOT READY." HE SAID HE -- HE THOUGHT HE'D BE PRETTY CLOSE TO RESOLVING PHASE TWO JUST BASED ON WHAT HE HAS, BUT YOU KNOW HOW HE OPERATES.

MR. HAYES: ALL RIGHT. THANK YOU, YOUR HONOR.

MR. KEEHN: YOUR HONOR, I WOULD MAKE SOME COMMENTS HERE THAT I THINK ARE APPROPRIATE IN LIGHT OF WHAT I JUST HEARD.

AS THE COURT CORRECTLY POINTS OUT, IT WAS THE DEBTOR THAT WANTED THE BIFURCATION, AND MORE THAN SIMPLY BIFURCATION, AND REQUESTED NO DISCOVERY ON THE SECOND PHASE ISSUES, AND SO TO SAY, WELL, NOW I HAVE TO DEAL WITH THE SUMMARY JUDGMENT MOTION AS TO ISSUES FOR WHICH I'VE BEEN PRECLUDED FROM CONDUCTING DISCOVERY IS JUST INAPPROPRIATE. I THINK CASE LAW SUPPORTS THE PROPOSITION THAT IF A RESPONDING PARTY CAN SHOW REASONABLY EQUIVALENT DISCOVERY IS NECESSARY TO RESOLVE IT, THEN THAT'S A BASIS FOR DENYING THE SUMMARY JUDGMENT MOTION. AND I WOULD HOPE THAT MR. HAYES WOULD RECONSIDER THAT ASPECT OF HIS GAME PLAN. BUT IT SEEMS TO ME WASTEFUL OF THE COURT'S RESOURCES TO CONSIDER THAT SECOND HALF AFTER IT'S BEEN ON HOLD.

THE COURT: WELL, YOU MIGHT WANT HIM COMING -- I MEAN, I'M NOT SURE WHY YOU'RE ARGUING THIS. YOU MIGHT WANT HIM TO FILE A MOTION ON BOTH GROUNDS. THEN YOU ARGUE YOUR 56(E) POSITION, AND -- BUT YOU'LL HAVE GOTTEN A FREE LOOK AT THE

PREMISES OF HIS MOTION.

MR. KEEHN: I DON'T WANT TO TAKE ADVANTAGE OF COUNSEL AND TAKE THE FREE LOOK. I'M WILLING TO JUST PLAY ACCORDING TO HOYLE AFTER THE DISCOVERY CONCLUDES, BUT DID I HEAR CORRECTLY, THE 28TH OF JUNE IS THE HEARING DATE?

THE COURT: NO, HE SAID IT'S THE 26TH.

THE CLERK: THE 26TH.

MR. KEEHN: THE 26TH, A MONDAY. YOU KNOW, THAT WOULD BE FINE IF WE HAD -- BUT I THINK IT'S A BETTER USE OF EVERYONE'S RESOURCES IF -- IF THE BRIEFING SCHEDULES WERE SET IN RECOGNITION OF WHAT WE HAVE: ONE, THAT I GET THE TRANSCRIPT, AND THEN MAYBE THAT I NEED TO DO MRS. LOPEZ TO BUTTON DOWN SOME ISSUES. WITH THAT SAID, THERE'S NO -- AS FAR AS I CAN SEE, OTHER THAN GIVING ME THE FREE LOOK, NO REASON FOR RUSHING TO FILE.

THE COURT: WELL, MR. HAYES WILL FILE HIS MOTION AS AND WHEN HE CHOOSES, AND WHEN YOURS IS READY, YOU CAN CONTACT THE MS. WILKINSON AND ASK HER FOR A HEARING DATE, AND IF YOU CAN GET IT SET TO BE HEARD ON THE SAME TIME SO THAT WE HAVE CROSS-MOTIONS AT LEAST ON ISSUE ONE, THAT'S FINE. AND THEN WE'LL TAKE IT FROM THERE.

MR. KEEHN: WELL, I THINK THAT THE PROBABILITY OF HAVING CROSS-MOTIONS IS SO HOT AT THIS POINT, THAT I ACTUALLY REQUEST THE COURT TO GIVE ME PERMISSION TO USE THAT DATE, AND I'LL FILE THE MOTION ACCORDINGLY.

DOCKET NUMBER 70

L. Scott Keehn (SBN 61691)
Leslie F. Keehn (SBN 199153)
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UNITED STATES BANKRUPTCY COURT

SOUTHERN DISTRICT OF CALIFORNIA

In Re: FRANCIS J. LOPEZ, Alleged Debtor	Case No. 05-05926-PBINV Involuntary Chapter 7 **PROOF OF SERVICE** Date: June 26, 2006 Time: 2:00 p.m. Judge: The Honorable Peter W. Bowie Ctrm: 4

I, the undersigned, declare, that I am over eighteen years of age and not a party to this action. I am employed in, or am a resident of, the County of San Diego, California, and my business address is: Robbins & Keehn, APC, 530 B Street, Suite 2400, San Diego, California.

On the date shown below, I caused to be served the following document(s):

EVIDENTIARY OBJECTIONS AND MOTION TO STRIKE PORTIONS OF THE DECLARATION OF FRANCIS J. LOPEZ MADE IN SUPPORT OF MOTION BY ALLEGED DEBTOR FOR SUMMARY JUDGMENT AND AN ORDER DISMISSING INVOLUNTARY PETITION

PETITIONING CREDITORS' MEMORANDUM OF POINTS AND AUTHORITIES IN OPPOSITION TO ALLEGED DEBTOR'S MOTION FOR SUMMARY JUDGMENT AND ORDER DISMISSING INVOLUNTARY PETITION

DECLARATION OF L. SCOTT KEEHN IN OPPOSITION TO ALLEGED DEBTOR'S MOTION FOR SUMMARY JUDGMENT

ROBBINS & KEEHN, APC
ATTORNEYS AT LAW
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DECLARATION OF ALAN STANLY IN OPPOSITION TO ALLEGED DEBTOR'S MOTION FOR SUMMARY JUDGMENT AND ORDER DISMISSING INVOLUNTARY PETITION

DECLARATION OF CYNTHIA K. LAY IN OPPOSITION TO ALLEGED DEBTOR'S MOTION FOR SUMMARY JUDGMENT AND ORDER DISMISSING INVOLUNTARY PETITION

CREDITORS' SEPARATE STATEMENT OF UNDISPUTED MATERIAL FACTS IN OPPOSITION TO ALLEGED DEBTOR'S MOTION FOR SUMMARY JUDGMENT ["CSUF"]

[ ] BY PERSONAL SERVICE: I placed a true copy of the above-named document(s) in a sealed envelope clearly labeled to identify the party being served, and personally caused said such envelope to be personally delivered on each addressee named hereafter:

[✔] **BY E-MAIL OR ELECTRONIC TRANSMISSION:** Based on a court order or an agreement of the parties to accept service by e-mail or electronic transmission, I caused a true copy of the above-named documents to be sent to the persons at the e-mail addresses listed below. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

M Jonathan Hayes
Email Address: jhayes@polarisnet.net

[✔] **BY MAIL:** I declare that I am readily familiar with this business's practice for collection and processing of correspondence for mailing with the United States Postal Service, that the correspondence shall be deposited with the United States Postal Service this same day in the ordinary course of business; and that I enclosed a true copy of the above-named documents in a sealed envelope or package, with postage thereon fully prepaid, for each addressee named hereafter:

UNITED STATES TRUSTEE
Department of Justice
402 West Broadway, Suite 600
San Diego, California 92101

M. Jonathan Hayes, Esq.
Law Office of M. Jonathan Hayes
21800 Oxnard Street, Suite 840
Woodland Hills, California 91367

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on June 15, 2006.

//s// Aaron S. Guile
AARON S. GUILE

DOCKET NUMBER 71

L. Scott Keehn (SBN 61691)
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Attorneys for **Petitioning Creditors**

UNITED STATES BANKRUPTCY COURT

SOUTHERN DISTRICT OF CALIFORNIA

In Re: FRANCIS J. LOPEZ, Alleged Debtor	Case No. 05-05926-PBINV Involuntary Chapter 7 **ERRATA TO THE MEMORANDUM OF POINTS AND AUTHORITIES IN OPPOSITION TO ALLEGED DEBTOR'S MOTION FOR SUMMARY JUDGMENT [DOCKET ITEM 68]** Date: June 26, 2006 Time: 2:00 p.m. Judge: The Honorable Peter W. Bowie Ctrm: 4

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A footnote was inadvertently omitted from the sentence that begins on line 21 of page 2 and ends on line 1 of page 3 of the "**Petitioning Creditors' Memorandum of Points and Authorities in Opposition to Alleged Debtor's Motion for Summary Judgment and Order Dismissing Involuntary Petition**" filed with the Court on June 14, 2006, and identified as Docket Item No. 68. The footnote should be added so that the sentence now reads in its entirety as follows:

> From the time the bifurcation order was issued to this day, Lopez has enjoyed the benefits and protections of the bifurcation order[1].

Dated: June 15, 2006

ROBBINS & KEEHN
A Professional Corporation

By: //s// L. Scott Keehn
L. Scott Keehn
Leslie F. Keehn
Attorneys for Petitioning Creditors

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[1] e.g. Lopez brought a motion for a protective order (Docket Item 41), to relieve him from having to produce at his deposition copies of Tax returns and various other documents based on the limited discovery permitted by the Bifurcation Order (Docket Item 41 at P. 6, Ln 1- 4). The motion was granted on April 3, 2006 (Docket Item 48), and during his deposition on April 27,2006, Lopez invoked the benefit of that Protective Order (See LSK Decl. [Docket Item 58, Exhibit A (Lopez Depo Transcript) at P. 9, Ln. 21 - P.10, Ln 17).

DOCKET NUMBER 73

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Attorneys for **Petitioning Creditors**

UNITED STATES BANKRUPTCY COURT

SOUTHERN DISTRICT OF CALIFORNIA

In Re: FRANCIS J. LOPEZ, Alleged Debtor	Case No. 05-05926-PBINV Involuntary Chapter 7 **CREDITORS' MEMORANDUM OF POINTS AND AUTHORITIES IN REPLY TO LOPEZ'S OPPOSITION TO SUMMARY JUDGMENT MOTION** **[BIFURCATED PHASE I]** Date: June 26, 2006 Time: 2:00 p.m. Judge: The Honorable Peter W. Bowie Ctrm: 4

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I. INTRODUCTION

Distilled to its essence the Lopez Opposition is a tale "*full of sound and fury, signifying nothing.*"[1] It is built on testimony that is part sham, part conclusion, part illusion, and wholly non-responsive to the evidence that compels the granting of the motion.

The Lopez motion for summary judgment presents, among other things, the opposite perspective of the same issues raised in this motion. It essentially raises the same issues in a separate procedural context as those raised in the opposition to this motion. The opposition to that motion filed by the petitioning creditors also addresses and disposes of the issues raised in this opposition. Accordingly, the petitioning creditors incorporate herein by this reference the following pleadings and papers as though the same were fully set forth herein at this point: (a) the "Opposition by Petitioning Creditors to Alleged Debtors Motion for Summary Judgment" [Docket Item 68]; (b) "Creditors' Separate Statement of Undisputed Material Facts" [Attachment 1 to Docket Item 68]; (c) "Evidentiary Objections etc." [Attachment 2 to Docket Item 68]; (d) "Declaration of Alan Stanly (including the transcript of the Lopez exam)" [Attachment 3 to Docket Item 68]; (e) "Declaration of L. Scott Keehn filed in Opposition to Alleged Debtor's Motion for Summary Judgment (LSK 6/15/06 Decl)" [Docket Item 69].

II. DISCUSSION

A. THE "SHAM AFFIDAVIT" RULE BAR'S ALL PORTIONS OF THE LOPEZ OPPOSITION DECLARATION ASSERTING THE EXISTENCE OF MORE THAN SEVEN (NON INSIDER) CREDITORS.

The Ninth Circuit follows what is commonly referred to as the "Sham Affidavit" rule. This principle precludes a party from utilizing either new declarations, or specious corrections to prior deposition testimony [both referred to as "Sham Affidavits"] to support their position in the context of a summary judgment motion.[2] The rule is well accepted among circuits and has been

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[1] William Shakespeare, *Macbeth*, Act V, scene 5.

[2] *Hambleton Bros. Lumber Co. v. Balkin Enterprises, Inc.* 397 F.3d 1217, 1225 (C.A.9 (Or.),2005) citing *Kennedy v. Allied Mut. Ins. Co.*, 952 F.2d 262, 266 (9th Cir.1991).

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explained at length in Part III.A. of Petitioning Creditors' Opposition to the Lopez Summary Judgment Motion (Docket Item 68) and is specifically incorporated herein by this reference.[3]

In his initial examination on May 9, 2005, the only creditors that Lopez could identify were: Citi-Bank, Fleet Credit Card, American Express, Wayne Wise, and the Fort Walton Beach Medical Center.[4] That is a total of five. He also testified that there might be a "*couple of others*" whose names he was unable to recall specifically at the time.[5] So according to his original testimony, Lopez conceded that he would have no more than seven non-insider creditors as of May 9, 2005. To the extent that his Opposition Declaration purports to identify in excess of seven non-insider creditors – without explaining how they came into existence between May 9 and June 30, 2005 – the testimony must be stricken in the context of this summary judgment motion under the Sham Affidavit Rule. When the Sham portions of the Opposition Declaration are stricken, there is no evidence to rebut that which has been advanced by petitioning creditors' to establish that the number of creditors within the Section 303 Count is in fact less than twelve.

B. Lopez Failed to Rebut Petitioning Creditors' Assertion that *Non-Creditor Entities* Must be Excluded from the Section 303(b) Count.

In the summary judgment context, once "a moving party carries its burden of production, the nonmoving party must produce evidence to support its claim or defense."[6] Any such evidence must be admissible pursuant to the Federal Rules of Evidence.[7] Here, Lopez has failed to present admissible evidence to establish the following non-creditor entities should be included in the Section 303(b) count:

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3 See Exhibit C for full text.

4 RSUF 166-169.

5 RSUF 170

6 *Nissan Fire & Marine Ins. Co., Ltd. v. Fritz Companies, Inc.*, 210 F.3d 1099, 1103 (9th Cir. 2000); *In re Chin-Liang Chan*, 325 B.R. 432, 437 (Bkrtcy. N.D.Cal. 2005) ("the nonmoving party must go beyond the pleading and identify facts demonstrating a genuine issue for trial").

7 FRCP 56(e).

Non-Creditor Status	Lopez's Response	Lopez's proffered Insufficient and/or Inadmissible Evidence
Allstate Floridian (RSUF 35-40) Homeowners Insurance policy for the period 7/16/04 - 7/16/05 was paid in full in March 2005 – prior to the Petition Date. [See, Lopez Decl., Exhibit 2, pages 2B-1 & 2B-2; RSUF 37.]	Lopez asserts, for the first time, that a balance of $134.00 was owed as of the Petition Date due to policy changes which resulted in an increased premium. [Lopez Opp., pp. 2-3.] This contradicts Lopez's "List of Creditors" attached to his Answer alleging an outstanding balance of $1900.	Lopez Decl., Exhibit 2, pages 2-1, 2-2 & 2-3 are inadmissible as improperly redacted copies of correspondence. Significantly, this correspondence does not show that any payment is actually due, and no due-date is provided. Without that, the evidence does not establish an amount owing as of the Petition Date.
American Home Shield (RSUF 41-46) This insurance policy for the period 7/16/04 through 7/16/05 was paid in full, and therefore nothing was due as of the Petition Date. [RSUF 46.]	Lopez reiterates his unsupported claim that he is indebted to this creditor in the amount of $128.00. [Lopez Opp., p. 3.]	No evidence provided. Lopez's Declaration fails to even mention this entirely.
Coastal Community Insurance (RSUF 73-78) This insurance policy for the period 7/30/04 though 7/30/05 had been paid in full by August 9, 2004 - before the Petition Date. [RSUF 75-78.]	Lopez asserts that certain "renewal" payments were required as of the Petition Date, but never specifies any amounts or due dates. [Lopez Opp., p. 5.]	No evidence provided. Lopez's Declaration fails to specifically address this entity's non-creditor status, and instead makes general, irrelevant assertions regarding escrow accounts. [Lopez Decl. ¶19.]
Northwest Florida Daily News (RSUF 96-100) As of 5/17/05, this newspaper subscription had been pre-paid for a 3-month period. [RSUF 98.]	Lopez acknowledges that nothing was owed to this creditor as of the Petition Date. [RSUF 98.]	No tangible evidence provided.
Progressive Insurance (RSUF 112-115) This automobile insurance policy had been paid in full as of the Petition Date. [RSUF 114.]	Lopez claims that a certain "Exhibit 10" supports his claim that an installment payment was due as of the Petition Date. [Lopez Opp., p. 7.]	No evidence provided. Lopez failed to produce the referenced "Exhibit 10." Moreover, Lopez's Declaration never mentions this entity.

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Non-Creditor Status	Lopez's Response	Lopez's proffered Insufficient and/or Inadmissible Evidence
Valley Forge Life Insurance (RSUF 132-137) Madeleine Lopez — the alleged debtor's spouse — purchased this life insurance policy on Lopez. Therefore, Lopez is not the account debtor obligated to pay this entity. [RSUF 135.]	Lopez never claims that he is the account debtor on this obligation, or that any amount was actually due on the Petition Date. [Lopez Opp., p. 8.]	No tangible evidence provided.

The Ninth Circuit is very clear regarding the effect of an opponent's failure to produce sufficient evidence to rebut the moving party's showing:

> If the nonmoving party fails to produce enough evidence to create a genuine issue of material fact, the moving party wins the motion for summary judgment.[8]

Lopez has failed to present evidence establishing that these entities were in fact qualifying creditors as of the Petition Date, and therefore the Petitioning Creditors are entitled to summary adjudication in their favor.

C. Lopez Failed to Present Evidence Rebutting Petitioning Creditors' Assertion that *Insiders* Alan Stanly and Frederic Lopez Must be Excluded from the Section 303(b) Count.

Lopez does not dispute that his father, Frederic Lopez, is not a qualifying creditor for purposes of the 303(b) count. Regarding Alan Stanly, Lopez's opposition expresses "astonishment" at the movants' exclusion of Stanly from the 303(b) count, and then concludes – without citation to any authority or evidence – that Stanly "obviously" is not an insider.[9]

However, Lopez failed to proffer any facts whatsoever to refute the movants' evidence establishing that Stanly is Lopez's "insider" due to his 50% interest in Prism Technologies (Lopez owns the other 50%)[RSUF 121-122]. Lopez's own declaration never even attempts to address this fact. This failure to respond is patently insufficient to defeat summary judgment:

8 *Nissan Fire & Marine Ins. Co., Ltd. v. Fritz Companies, Inc.*, supra, at 1103.

9 Lopez Opp., page 7, lines 22 - 26.

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> When a motion for summary judgment is made and supported as provided in this rule, an adverse party may not rest upon the mere allegations or denials of the adverse party's pleading, but the adverse party's response, by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial. ***If the adverse party does not so respond, summary judgment, if appropriate, shall be entered against the adverse party.*** [FRCP 56 (e)]

D. Lopez Failed to Present Evidence Rebutting the Claim that *Disputed Debts* Must be Excluded from the Section 303(b) Count.

Lopez failed to refute the evidence presented by the Petitioning Creditors which establishes that – as of the Petition Date – Lopez disputed the following claims:

Disputed Claims	Lopez's Response	Lopez's proffered Insufficient and/or Inadmissible Evidence
Bankcard Services (RSUF 57-60) Lopez disputed certain late charges on this account. [Movants' RSUF 60.]	Lopez claims the dispute with this creditor was resolved, but does not specify the date of the resolution. [Lopez Opp., p.4; Lopez Decl. ¶17.]	No tangible evidence provided. Without any such evidence, Lopez has failed to establish whether the claim was actually disputed as of the Petition Date – the relevant date for purposes of the Section 303(b) count.
Walton Beach Medical Center (RSUF 82-84) Lopez disputed this medical bill, contending he was assured that the services would be covered by his insurance.	Lopez claims that the circumstances giving rise to the dispute need to be "clarified." [Lopez Decl. ¶20.]	No tangible evidence provided. Lopez's Declaration claims the status of this dispute "needs clarification" but then fails to clarify whether Lopez continues to dispute the bill, or intends to pay it. In any event, Lopez's testimony regarding this creditor is improper and inadmissible.
Verizon Wireless (RSUF 138-141) During the period of April 2005 through August 3, 2005, Lopez disputed charges of approximately $227 on his account. [RSUF 139-141.]	Lopez claims the dispute was resolved, but does not specify the date of the resolution. [Lopez Decl. ¶24.] The testimony does not assert that the dispute was resolved before June 30, 2005, which plainly implies that it was not.	Lopez's declaration, and Exhibit 15 provided in support thereof, merely establish that as of November 4, 2005 – 4 months ***after*** the relevant Petition Date – the dispute had been resolved. The above evidence is consistent with Lopez's prior deposition testimony establishing that he resolved this dispute by paying the disputed charges on August 3, 2005 – ***after*** the relevant Petition Date. [Movants' RSUF 141.] Thus, there is no tangible evidence to refute the existence of a dispute with this creditor as of June 30, 2005.

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E. Lopez Failed to Meet His Burden of Proving His Proffered "*Ordinary Course of Business*" Defense to Certain Preferences or His Defenses to *Post-Petition Transfer Voidability.*

Lopez does not dispute that creditors who received preferences or improper post-petition transfers must be excluded from the Section 303(b) count.[10] Nor does he deny making payments to many of his listed creditors during the preference period, and after the petition date. He simply defends transfers as being made in the "ordinary course of business."

To establish the ordinary course of business defense, and thereby defeat summary judgment, Lopez bears the burden of establishing:

> (1) the debt and its payment are ordinary in relation to past practices between the debtor and that particular creditor, and (2) the payment was ordinary in relation to prevailing business standards.[11]

Summary judgment will not be defeated without admissible evidence of both elements, even where the moving party merely points out the opponent's lack of evidence.[12]

Lopez does not even attempt to provide evidence to support either of the elements. Instead, he summarily concludes that preference-period and/or post-petition payments to the following creditors were made in the "ordinary course of business." Such unsupported assertions in his Memorandum of Points & Authorities that these transfers "were made in the ordinary course of business" do not constitute evidence, much less the requisite "admissible evidence" to defeat summary judgment. Similarly he has failed to produce any evidence to actually support his conclusory testimony to the effect that various post-petition transfers were not made by him or from his estate. Without the necessary evidence, Lopez's asserted defense fails.

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[10] 11 U.S.C. § 303(b)(2)

[11] *In re National Lumber and Supply, Inc.*, 184 B.R. 74, 79 (9th Cir.BAP 1995) .

[12] *Id.* ("On a summary judgment motion, if the nonmoving party bears the burden of proof on an issue at trial, the moving party simply may point to the absence of evidence to support the nonmoving party's case").

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Creditor/Transferee	Lopez's Failure to Provide the Requisite Evidence
Bank of America (RSUF 47-56) Received voidable transfers under both § 547 & § 549.	Lopez failed to produce any evidence whatsoever regarding either: (1) his payment practice with this creditor, or (2) this creditor's payment requirements. Exhibit 4 to Lopez's Declaration is an invoice from Bank of America showing that as of July 13, 2005, his account is past due. Lopez never attempts to explain how this invoice establishes the requisite elements of his asserted defense. Significantly, Lopez never attempts to explain why his "past due" account status should be deemed "ordinary" in the course of his dealings with this creditor. No other tangible evidence was provided.
Bankcard Services (RSUF 57-60) Received voidable transfers under § 547.	Lopez failed to produce any evidence whatsoever regarding either: (1) his payment practice with this creditor, or (2) this creditor's payment requirements. These transfers are not addressed in either Lopez's Declaration or Lopez's Response to movants' Separate Statement of Undisputed Facts.
Cingular Wireless (RSUF 61-64) Received voidable transfers under both § 547 & § 549.	Lopez failed to produce any evidence whatsoever regarding either: (1) his payment practice with this creditor, or (2) this creditor's payment requirements. These transfers are not addressed in either Lopez's Declaration or Lopez's Response to movants' Separate Statement of Undisputed Facts. Exhibit 13 to Lopez's Declaration is an invoice from Cingular showing that as of 6/19/2005, his account was charged a late fee. Significantly, Lopez never attempts to explain why his delinquent account status (as evidenced by the late fee) should be deemed "ordinary" in the course of his dealings with this creditor. No other tangible evidence was provided.
Citi Cards (RSUF 65-72) Received voidable transfers under § 547.	Lopez failed to produce any evidence whatsoever regarding either: (1) his payment practice with this creditor, or (2) this creditor's payment requirements. These transfers are not addressed in either Lopez's Declaration or Lopez's Response to movants' Separate Statement of Undisputed Facts.
Cox Communications (RSUF 79-81) Received voidable transfers under § 549.	Lopez failed to produce any evidence whatsoever regarding either: (1) his payment practice with this creditor, or (2) this creditor's payment requirements. These transfers are not addressed in either Lopez's Declaration or Lopez's Response to movants' Separate Statement of Undisputed Facts. Exhibit 5 to Lopez's Declaration is an invoice from Cox dated 7/22/05. Lopez never attempts to explain how this single invoice establishes his standard practice of dealing with this creditor. No other tangible evidence was provided.
Household Bank/HSBC (RSUF 85-90) Received voidable transfers under § 549.	Lopez failed to produce any evidence whatsoever regarding either: (1) his payment practice with this creditor, or (2) this creditor's payment requirements. Lopez's proffered hearsay statement that Household Bank told him that a $50 payment "would suffice" does not even begin to establish Lopez's ordinary course of dealing with this creditor. No tangible evidence was provided.

Creditor/Transferee	Lopez's Failure to Provide the Requisite Evidence
Kelly Plantation Owners Association (RSUF 91-95) Received voidable transfers under § 549.	Lopez failed to produce any evidence whatsoever regarding either: (1) his payment practice with this creditor, or (2) this creditor's payment requirements. Exhibit 7 to Lopez's Declaration suggests that Lopez's wife paid $550 to this creditor on 7/26/05. Lopez never attempts to explain how this alleged payment establishes his standard practice of dealing with this creditor. No other tangible was provided.
Northwest Florida Daily News (RSUF 96-100) Received voidable transfers under § 547.	Lopez failed to produce any evidence whatsoever regarding either: (1) his payment practice with this creditor, or (2) this creditor's payment requirements. No tangible evidence was provided.
Okaloosa Gas District (RSUF 101-114) Received voidable transfers under both § 547 & § 549.	Lopez failed to produce any evidence whatsoever regarding either: (1) his payment practice with this creditor, or (2) this creditor's payment requirements. Exhibits 7 and 9 to Lopez's Declaration evidence two payments to this creditor (on 7/21/05 and 10/31/05 respectively). Lopez never attempts to explain how these two payments establish his standard practice of dealing with this creditor. No other tangible evidence was provided.
Quicken Platinum Card RSUF 116-120) Received voidable transfers under both § 547 & § 549.	Lopez failed to produce any evidence whatsoever regarding either: (1) his payment practice with this creditor, or (2) this creditor's payment requirements. This creditor is not addressed in Lopez's Declaration, and no tangible evidence is provided.
Texaco/Shell (RSUF 123-131) Received voidable transfers under both § 547 & § 549.	Lopez failed to produce any evidence whatsoever regarding either: (1) his payment practice with this creditor, or (2) this creditor's payment requirements. This creditor is not addressed in Lopez's Declaration, and no tangible evidence is provided.
Union Bank of CA(RSUF 148-163) Received voidable transfers under both § 547 & § 549.	Lopez failed to produce any evidence whatsoever regarding either: (1) his payment practice with this creditor, or (2) this creditor's payment requirements. This creditor is not addressed in Lopez's Declaration, and no tangible evidence is provided.
Verizon Wireless (RSUF 138-141) Received voidable transfers under both § 547 & § 549.	Lopez failed to produce any evidence whatsoever regarding either: (1) his payment practice with this creditor, or (2) this creditor's payment requirements. Lopez admits that a payment of approximately $227 was paid to this creditor in August 2005 to settle a dispute. [Movants' UF 139-141.] Clearly, such a settlement could not be deemed "ordinary" in the course of his dealings with Verizon. In addition, Exhibit 15 to Lopez's Declaration consists solely of two invoices from this creditor dated 11/4/05 & 12/4/05. Lopez never attempts to explain how these invoices establish his standard practice of dealing with this creditor. No other tangible was provided.

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With respect to Cox Communication, the fact that Noveon Systems ("Noveon") – a corporation wholly owned by Mrs. Lopez[13] – accommodated the post-petition transfer is no defense to its avoidability. From Lopez's testimony, we know that high-speed internet services were delivered to the Lopez residence on his account for use on behalf of Noveon, and Lopez expected a reimbursement of that expense from Noveon.[14] However, there is no dispute that Lopez was the account debtor on the obligation. To the extent that he had a legitimate reimbursement claim of that bill, it was a chose in action held by Lopez against Noveon. That claim for reimbursement was an asset of his estate.

The purpose of making post petition transfers avoidable is to insure that the distribution scheme of the Bankruptcy Code is not circumvented by post petition payments. The asset and liability picture of the debtor is intended to freeze as of the petition date with assets liquidated and claims paid in accordance with the Bankruptcy priorities.[15] Post petition transfers that tinker with that scheme become avoidable under § 549.

Throughout the Bankruptcy Code the concept of a "*transfer*" is broadly construed to effectuate the overarching purposes of the code. The following is a useful tutorial on the breadth of the concept delivered by the Bankruptcy Court for the Northern District of Illinois:

> "Transfer" is defined in Section 101(58)[54] of the Bankruptcy Code to encompass "every mode, direct or indirect, absolute or conditional, voluntary or involuntary, of disposing of or parting with property or with an interest in property." 11 U.S.C. § 101(58)[54]. Congress intended transfer to be construed as broadly as possible. H.R.Rep. No. 95-595, 95th Cong. 1st Sess. 314 (1977), U.S.Code Cong. & Admin.News 1978, p. 5787. As is evidenced in the definition, a transfer does not have to be made directly by a debtor. The term "transfer" as used in various bankruptcy statutes has been broad enough to cover such indirect transfers and to catch various circuitous arrangements which have the effect of a fraudulent conveyance. *Matter of Compton Corp.*, 831 F.2d 586, 591-92 (5th Cir.1987); *Katz v. First Nat. Bank of Glen Head*, 568 F.2d 964, 969 n. 4 (2nd Cir.1977), *cert. denied*434 U.S. 1069, 98 S.Ct. 1250, 55 L.Ed.2d 771 (1978); *In re Grambling*, 99 B.R. 515, 517-18 (Bankr.D.Conn.1989). To combat circuity, courts have broken down transfers into two transfers, one direct, and one indirect. *Compton Corp.*, 831

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13 LSK 6/15/06 Decl Exhibit M (Madeline Depo) at Page 36, lines 10-20.

14 Lopez Depo at page 133 line 16 through page 135, line 3 (see Exhibit B attached hereto for the full text of the colloquy).

15 See e.g. *In re Auto Parts Club, Inc.* 224, 445, 447 (Bankr. S.D. Cal. 1998), citing *Vanston Bondholders Protective Committee v. Green* 329 U.S. 156, 161 (1946)

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> F.2d at 591. In this proceeding, it is undisputed that a direct transfer occurred. Sizzler transferred $1.4 million to River Bank via a check payable to Quest Equities. This transfer is not the transfer which the Trustee seeks to avoid. Rather, the Trustee seeks to avoid the indirect transfer from FBN to River Bank, Quest Equities and/or Quest Realty. The Trustee contends that the fact pattern in this case is analogous to cases in which the Debtor directs a party to pay money due the Debtor to another party. If the effect of the transfer is to defraud creditors, the transfer will be avoided. **An example of an indirect transfer is when A has a claim against B, and instead of B paying A directly for the claim, A directs B to pay C. The transfer from A to C is an indirect transfer of A's property.** *See Virginia Nat. Bank v. Woodson,* 329 F.2d 836 (4th Cir.1964) (Indirect transfer occurred when debtor's sister made payment to Bank for debtor's overdrawn account); *Smith v. Patton,* 194 Ill. 638, 62 N.E. 794 (1902) (Pursuant to settlement agreement concerning a will contest, an indirect transfer occurred when will contestant directed legatee to transfer money to his daughter). In such a scenario, the debtor never has possession of the funds, but directs a third party to transfer those funds to a recipient. For fraudulent transfer purposes, the transaction is treated the same as if the debtor transferred the funds, instead of the third party.[16]

Here we have Lopez directing Noveon to pay Cox,[17] fitting snugly into the "A directs B to pay C" scenario described in *FBN Food Service, Inc.* The whole step-by-step transaction is the transfer, it occurred post petition, and it is avoidable under § 549.

III. CONCLUSION

Lopez has failed on every front to meet his burden of coming forward with the evidence necessary to defeat the motion. Accordingly the motion should be granted in its entirety, or, alternatively the court should adjudicate the undisputed facts.

Dated: June 21, 2006

ROBBINS & KEEHN
A Professional Corporation

By: //s// L. Scott Keehn
L. Scott Keehn
Attorneys for **Petitioning Creditors**

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[16] *In re FBN Food Service, Inc.* 175 B.R. 671, 683 (Bkrtcy.N.D.Ill.,1994) (Emphasis added)

[17] See LSK 6/15/06 Decl, Exhibit M (Madelines Depo) at Page 53, line 6 to page 54 line 4 (Lopez is general manager of Noveon, controls finances, and prepares checks that Madeline signs without review).

EXHIBIT A

SUMMARY OF SECTION 303 COUNT
BASED ON UNDISPUTED EVIDENCE

Creditors Listed in Lopez's Answer	Included in §303(b)(2) Count	Excluded Because
ALLSTATE FLORIDIAN (Homeowners Insurance)	NO	Non-Creditor (Post-Petition Debt) See Reply Statement of Undisputed Facts ["RSUF"] 35-40
AMERICAN EXPRESS (Credit Card)	YES	Non-Creditor (Disclaims Debt) RSUF 41-43.1
AMERICAN HOME SHIELD (Insurance)	NO	Non-Creditor (Post-Petition Debt) RSUF 44-46
BANK OF AMERICA (Credit Card)	NO	§547 & §549 RSUF 47-56
BANKCARD SERVICES (Credit Card)	NO	Disputed & §547 RSUF 57- 60
CINGULAR WIRELESS (Mobile Phone)	NO	§547 or §549 RSUF 61- 64
CITI CARDS (Credit Card)	NO	§547 RSUF 65- 72
COASTAL COMMUNITY INSURANCE (Property Insurance)	NO	Non-Creditor (Post-Petition Debt) RSUF 73-78
COX COMMUNICATIONS (Television and Internet)	NO	§549 RSUF 79-81
FT. WALTON BEACH MEDICAL CENTER (Emergency Room/Medical Services)	NO	Disputed RSUF 82-84
HOUSEHOLD BANK / HSBC (Credit Card)	NO	§547 RSUF 85-90

Creditors Listed in Lopez's Answer	Included in §303(b)(2) Count	Excluded Because
KELLY PLANTATION OWNERS ASSOCIATION (Homeowners Association)	NO	§549 RSUF 91-95
NORTHWEST FLORIDA DAILY NEWS (Newspaper)	NO	Non-Creditor (Pre-Paid) & §547 RSUF 96-100
OKALOOSA GAS DISTRICT (Utilities)	NO	§547 & §549 RSUF 101-114
PROGRESSIVE INSURANCE (Auto Insurance)	NO	Non-Creditor (Post-Petition Debt) RSUF 112-115
QUICKEN PLATINUM CARD (Credit Card)	NO Duplicate of Citi-Card (Two Claims – Same Carrier)	§547 & §549 RSUF 116-120
STANLY, ALAN (Judgment Creditor)	NO	Insider RSUF 121-122
TEXACO/SHELL (Gasoline Credit card)	NO	§547 & §549 RSUF 123-131
UNION BANK OF CALIFORNIA (Settlement)	NO	§547 & §549 RSUF 148-163
VALLEY FORGE LIFE INSURANCE (Life Insurance)	NO	Non-Creditor RSUF 132-137
VERIZON WIRELESS (Mobile phone)	NO	Disputed & §549 RSUF 138-141
WISE, WAYNE (Personal Loan)	NO	§547 RSUF 142-147

EXHIBIT B

Q. Okay. So if you paid -- on those occasions when you did pay the Cox Communications bill, did you pay them from the Compass Bank account?
A. Yeah. It's possible. It's also possible that since Cox Communications supplied internet -- basically, internet services, it's possible that it may have been paid out of Noveon's account.
Q. Okay. Why would Noveon pay your Cox Communication bill?
A. Did you hear the first part of my answer?
Q. Yeah, I did, but the internet has many uses.
A. When it has to do with high speed internet, mainly for business use, then it's quite conceivable that that may have been paid out of Noveon.
Q. Okay. But you don't know for sure one way or the other?
A. Not looking at this, no.
Q. All right. All we know for sure from looking at Exhibit Number 5 is that for whatever reason -- well, I can't read that date going back to the Row 2, Column 3 check. Can you read the date? Is that 11/11/04? I can't read it at all.
A. That one says 11/11/04, but I don't think that's the same payment.
Q. Okay. Noveon was in business in November of 2004, right?
A. Yes.
Q. It was using internet, correct?
A. Absolutely.
Q. The internet that goes to your home?
A. That's correct.
Q. Okay. Do you still have internet service from Cox Communications as we speak?
A. Yes, I do.
Q. Have they ever discontinued service for nonpayment?
A. Never.
Q. Okay. So you've generally paid the bills -- well, whatever the amount that was due on June 30th, 2005, that's been paid, hasn't it?
A. Which one are you referring to now?
Q. Well --
A. Exhibit 11?
Q. Well, let's just start with Exhibit 17. We

EXHIBIT C

A. THE LOPEZ DECLARATION IN SUPPORT OF HIS SUMMARY JUDGMENT MOTION ("LOPEZ SJM DECL") IS A "SHAM AFFIDAVIT" WHICH MUST BE STRICKEN.

The Ninth Circuit follows what is commonly referred to as the "Sham Affidavit" rule. This principle precludes a party from utilizing either new declarations, or specious corrections to prior deposition testimony [both referred to as "Sham Affidavits"] to support their position in the context of a summary judgment motion.[1] The rule is well accepted among circuits in addition to the Ninth Circuit, and is specifically followed in at least the Third Circuit,[2] the Seventh Circuit[3], and Eighth Circuit.[4] The purpose of the "Sham Affidavit" rule has been explained by various courts as follows:

> The very purpose of summary judgment under Rule 56 is to prevent "the assertion of unfounded claims or the interposition of specious denials or sham defenses ····"10 C. Wright, A. Miller & M. Kane, *Federal Practice and Procedure* § 2712 (1983). If a party who has been examined at length on deposition could raise an issue of fact simply by submitting an affidavit contradicting his own earlier testimony, this would greatly diminish the utility of summary judgment as a procedure for screening out sham issues of fact.
> *Id.* We emphasized that while summary judgment "is to be reserved for those cases in which there is no genuine material issue

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1 *Hambleton Bros. Lumber Co. v. Balkin Enterprises, Inc.* 397 F.3d 1217, 1225 (C.A.9 (Or.),2005) citing *Kennedy v. Allied Mut. Ins. Co.*, 952 F.2d 262, 266 (9th Cir.1991).

2 *Martin v. Merrell Dow Pharmaceuticals, Inc.* 851 F.2d 703, 706 (C.A.3 (Pa.),1988)

3 *U.S. v. Funds in the amount of $30,670* 403 F3d 448, 466 (C.A. 7 (ILL.), 2005).

4 *City of St. Joseph, Mo. v. Southwestern Bell Telephone 439 F.3d 468*, (475 -476 (C.A.8 (Mo) 2006), citing *Camfield Tires, Inc. v. Michelin Tire Corp.*, 719 F.2d 1361, 1363 - 1366 (8th Cir.1983).

> of fact for determination," if "testimony under oath ··· can be abandoned many months later by the filing of an affidavit, probably no cases would be appropriate for summary judgment." *Id.* No party should be allowed to create "issues of credibility" by contradicting his own previous testimony.[5]

The same thought was noted by the 7th Circuit:

This is why courts do not countenance the use of so-called "sham affidavits," which contradict prior sworn testimony, to defeat summary judgment.[6]

The logic of, and purposes served by the rule apply with equal force where, as here, the "Sham Affidavit" is offered to secure rather than evade summary judgment.

This "Sham Affidavit" rule is not an arcane or esoteric legal concept. Rather, it is the reflection of a basic and intuitive reality. That is: *Truth is constant.* It does not change in a way that allows witnesses to alter their testimony to meet the perceived requirements of their position in a summary judgment motion. That would be an anathema to the overarching purpose of every aspect of civil litigation, which is to seek out and find the truth, so that the law might be applied to that truth.

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[5] *City of St. Joseph, Mo. v. Southwestern Bell Telephone* 439 F.3d 468 (475 -476 (C.A.8 (Mo) 2006), citing *Camfield Tires, Inc. v. Michelin Tire Corp.*, 719 F.2d 1361, 1363 - 1366 (8th Cir.1983); In accord if a party who has been examined at length on deposition could raise an issue of fact simply by submitting an affidavit contradicting his own prior testimony, this would greatly diminish the utility of summary judgment as a procedure for screening out sham issues of fact, see also *Martin v. Merrell Dow Pharmaceuticals, Inc.* 851 F.2d 703, 706 (C.A.3(Pa.),1988).

[6] *U.S. v. Funds in Amount of Thirty Thousand Six Hundred Seventy Dollars* 403 F.3d 448, 466 (C.A.7 (Ill.) 2005)[Summary judgment would be meaningless if litigants could manufacture genuine issues of material fact through self-serving and unsupported "admissions" materially different from positions taken in the past. This is why courts do not countenance the use of so-called "sham affidavits," which contradict prior sworn testimony, to defeat summary judgment], citing *Bank of Ill. v. Allied Signal Safety Restraint Sys.*, 75 F.3d 1162, 1168-69 (7th Cir.1996) ["We have long followed the rule that parties cannot thwart the purposes of Rule 56 by creating 'sham' issues of fact with affidavits that contradict their prior depositions···· If such contradictions were permitted, ···'the very purpose of the summary judgment motion-to weed out unfounded claims, specious denials, and sham defenses-would be severely undercut.' "]

Lopez presents a prime example of both the utility and propriety of the "Sham Affidavit" rule. A review of his testimony as referenced in the Petitioning Creditors' Evidentiary Objections filed concurrently herewith ("Objections") – specifically with reference to Objections 2, 4, 7 and 9 – demonstrates his willingness to give different testimony at various times, presumably to conform to whatever his perception of his best interests at the moment may be. Such propensities are not tolerated in the context of federal litigation, and the "Sham Affidavit" rule has been developed as a principle to prevent the process from becoming contaminated by contrived after-the-fact testimony.

Lopez was first examined at length as to the identity of his creditors in the May, 9, 2005 deposition/examination.[7] At most he could identify seven such creditors, and allowed for the possibility that there might be one or two more that he could not think of at the time.[8] He now uses his declaration as a "Sham Affidavit" in an attempt to disavow the earlier testimony and substitute the newly manufactured statements that better suit his purpose at this point in time. This more purposefully crafted testimony runs afoul of both the principles and policies of promoting the integrity of the judicial process that the "Sham Affidavit" rule is designed to serve. The Lopez SJM Decl. cannot stand.

The Lopez SJM Decl. also has contrived testimony which must be stricken under the "Sham Affidavit" doctrine which is now offered to support his contention that he had mortgage

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7 See Exhibit A to the Declaration of Alan Stanly filed concurrently herewith.

8 CSUF No. 164-170.

obligations and other secured creditors that he was paying timely,[9] that Stanly is not an "insider" subject to exclusion in the § 303 Count,[10] and to assert that none of his putative creditors held claims that were subject to a dispute as of June 30, 2005.[11] All of this evidence must be stricken, and excluded from consideration in support of the Lopez summary judgment motion under the "Sham Affidavit" rule.

When the Sham Affidavit is stricken there is no putative evidence to support Lopez's motion for summary judgment.

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9 See Objection No. 4.

10 See Objection No. 7.

11 See Objection No. 9.

DOCKET NUMBER 73-1

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UNITED STATES BANKRUPTCY COURT

SOUTHERN DISTRICT OF CALIFORNIA

In Re: FRANCIS J. LOPEZ, Alleged Debtor	Case No. 05-05926-PBINV Involuntary Chapter 7 **CREDITORS' SEPARATE STATEMENT OF UNDISPUTED MATERIAL FACTS IN REPLY TO LOPEZ'S OPPOSITION TO SUMMARY JUDGMENT MOTION [RSUF]** **[BIFURCATED PHASE I]** Date: June 26, 2006 Time: 2:00 p.m. Judge: The Honorable Peter W. Bowie Ctrm: 4

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Petitioning creditors herein respectfully submit this Reply Statement of Undisputed Facts in reply to Lopez's opposition to the Creditors' " Motion for Summary Judgment etc."

UNDISPUTED MATERIAL FACTS	SUPPORTING EVIDENCE
CASE FILING AND JURISDICTION	
1. This case was commenced with an involuntary petition on June 30, 2005.	Docket Item 1. See also Docket Item 65 (Lopez "Response to Moving Party Separate Statement, Etc." ["Lopez UF"]) at **Lopez UF 1.**
2. This Court has jurisdiction under the involuntary petition.	28 U.S.C. § 1334(a) and 28 U.S.C. § 157(a) and (b)(1). **Lopez UF 2.**
GENERAL AND BACKGROUND FACTS	
3. Francis and Madeleine Lopez were married in 1991.	Lopez Depo. page 63, lines 4-6. **Lopez UF 3.**
4. Francis and Madeleine Lopez did not enter into a prenuptial agreement prior to their marriage.	Lopez Depo. page 63, lines 7-10. **Lopez UF 4.**
5. Francis and Madeleine Lopez have maintained the same joint checking account with Compass Bank since 2003.	Lopez Depo. page 74, line 11-25; Lopez Depo. Exhibit 5; LSK Decl. ¶ 15, Exhibit N, CB 001-002. **See Lopez Declaration in Opposition to Summary Judgment Motion ("Oppo Decl") at ¶ 2.**
6. According to Lopez's custom and practice, consistently applied, when he places a handwritten notation on a bill, that indicates that the bill has in fact been paid.	Lopez Depo. page 87, line 20 - page 88, line 6. *Note:* Lopez's declaration to the contrary (Oppo Decl at ¶ 3) must be stricken under the Sham Affidavit Rule (see Evidentiary Objections ("Evid Obj") filed concurrently herewith).
7. Noveon Systems is a Delaware corporation formed in May or June of 2003.	Lopez Depo. page 50, lines 7-15. **Lopez UF 7.**
8. Lopez first became employed by Noveon Systems in the latter half of July, 2003.	Lopez Depo. page 49, lines 9-12. **Lopez UF 8.**
9. Lopez was an officer of Noveon Systems from the time of its formation until late 2004 or sometime in mid 2005, at which point he resigned based on advice he received from attorneys.	Lopez Depo. page 52, line 11 - page 53, line 14; LSK Decl. at ¶ 14 (Madeleine's Depo.), page 36, lines 21-24. **Lopez UF 9.**
10. Lopez has served as a director of Noveon Systems from or about the time of its formation, and cannot recall if he has ever resigned that position.	Lopez Depo. page 53, line 12 - page 54, line 3. **Lopez UF 10.**

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11. Lopez provides services to Noveon in a sales capacity and is a customer service liaison for scheduling work and related services.	Lopez Depo. page 54, line 22 - page 55, line 1. **Lopez UF 11.**
12. Current compensation from Noveon Systems consists of a profit sharing plan in which he would receive a percentage of profits.	Lopez Depo. page 55, line 18 - page 56, line 2. **Lopez UF 12.**
13. Lopez received less than $12,500 in license fees from Noveon from January 1 to April 27, 2006.	Lopez Depo. page 58, line 8 - page 59, line 15. **Lopez UF 13.**
14. Lopez has received less than $50,000 dollars in aggregate compensation in all categories from Noveon since its inception through and including April 27, 2006.	Lopez Depo. page 59, lines 17-23. **Lopez UF 14.**
15. As of April 27, 2006, Lopez has received no profit sharing payments from Noveon (ever).	Lopez Depo. page 62, lines 20-23. **Lopez UF 15.**
16. In the early summer of 2005, Lopez became licensed to sell life and health insurance annuities and variable annuities in the State of Florida. As of April 27, 2006, he only utilized that license in a couple of ventures.	Lopez Depo. page 47, line 21 - page 48, line 20. **Oppo Decl at ¶ 4**
17. Francis Lopez's income from all sources in calendar year 2005 was less than $50,000.	Lopez Depo. page 70, line 18 - page 71, line 1. **Lopez UF 17.**
18. Lopez is the author of the document entitled "Francis Lopez Exhibit A List of Creditors."* *Hereinafter sometimes referred to as the "Creditor List" or "List of Creditors."	Lopez Depo. page 25, lines 8-9; Lopez Depo. Exhibit 17. **Lopez UF 18.**
LOPEZ'S RESIDENCE HAS APPARENT EQUITY OF $405,000.00	
19. Lopez purchased his residence at 310 San Myrtle Trail in the first half of 2003 for the purchase price of $745,000.	Lopez Depo. page 101, line 18 - page 102, line 4. *Note:* Lopez's declaration to the contrary (Oppo Decl at ¶ 5) must be stricken because it is an impermissible lay opinion regarding a legal issue; and the conveyance declaration (Exhibit 1 to Oppo Decl) is the best evidence of the manner in which title to the residence was taken. The warranty deed does not specify tenancy by the entities.
20. The current amount of the obligations secured by the residence are in excess of $800,000.	Lopez Depo. page 108, line 7 - page 109, line 2. *Note:* **Oppo Decl at ¶ 6.**

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21. The current value of the residence was recently listed on sale at a price of $1,295,000.00. In April 2006, Lopez accepted an offer to purchase the residence for the price of $1,195,000. That sale was never consummated.	See LFK Decl., original moving papers, at ¶ 2, Exhibit A. **Oppo Decl at ¶ 7.**
22. The residence is encumbered by a mortgage to Lehman Brothers Bank in the amount of $750,000.00.	See LFK Decl. at ¶ 4, Exhibit C. **Lopez UF 22.**
23. The residence is encumbered by a Home Equity Credit Line in the amount of $125,000.00, of which at least $65,000 has been drawn.	See Lopez Depo. page 116, line 7 - page 118, line 18; and LFK Decl. at ¶ 3, Exhibit B. **Lopez UF 23.**
24. Lopez is entitled to a minimum homestead exemption in the amount of $75,000.00.	Cal. CCP § 704.730(a)(2). *Note:* Lopez's declaration at Oppo Decl ¶ 8 must be stricken as an improper legal opinion . Further that testimony does not contradict RSUF 24 which only asserts the minimum value of the homestead exemption.
25. The net apparent equity in the residence to an estate is approximately $250,000.	**Oppo Decl at ¶ 9**
26. Other than his residence, and certain unspecified intellectual property having an unknown value, Lopez has no assets of any significant value (more than $10,000 equity).	Stanly Decl. at ¶ 13. **Oppo Decl at ¶ 10.**
THE TOTAL FORESEEABLE CLAIMS AGAINST THE LOPEZ ESTATE ARE AT LEAST $2,595,800.00	
27. Stanly holds claims against Lopez that total in excess of $2,435,800.00. Lopez asserts offsetting claims for invasion of privacy but offers no evidence of the factual basis of the claims, and is unable to specify an estimated amount thereof.	Stanly Decl. at ¶¶ 8-11. **Oppo Decl at ¶ 11.**
28. Frederick Lopez holds claims against Lopez in the amount of $55,000.	See next section below. Lopez's declaration to the contrary (Oppo Decl at ¶ 12) must be stricken under the Sham Affidavit Rule.
29. Other entities hold claims against Lopez of approximately $105,000.00.	Stanly Decl. at ¶ 12.

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LOPEZ OWES HIS FATHER - FREDERICK LOPEZ - $55,000 ($20,000 PRE-PETITION / $35,000 POST-PETITION BORROWING)	
30. As of May 9, 2005, Lopez owed his father – Frederick Lopez – $20,000 on account of money that Lopez had borrowed from him.	Lopez Depo. page 28, lines 17 - page 29, line 5. **Lopez UF 30.**
31. As of June 30, 2005, none of the monies that Lopez had borrowed from his father had been repaid.	Lopez Depo. page 31, lines 12-16. **Lopez UF 31.**
32. Since June 30, 2005, Lopez has borrowed an additional sum of $35,000 from his father.	Lopez Depo. page 30, lines 5-15. Lopez's declaration to the contrary (Oppo Decl at ¶ 13) must be stricken under the Sham Affidavit Rule.
33. Lopez did not include his father as a creditor on Exhibit A to his Answer (Lopez Depo. Exhibit 17) because he understood that it was not appropriate to include relatives on that list.	Lopez Depo., page 27, lines 13-20. **Lopez UF 33.**
LOPEZ'S ATTORNEY WILL HAVE POST-PETITION GAP CLAIMS	
34. To the best of his recollection (as refreshed by his review of available documents), Lopez has not paid his attorney of record in this case anything since February 5, 2006.	Lopez Depo. at page 14, line 14 - page 16, line 15. **Lopez UF 34.**
ALLSTATE FLORIDIAN WAS NOT A CREDITOR ON JUNE 30, 2005, BECAUSE THE PREMIUM DUE FOR THE 7/16/04 THROUGH 7/16/05 PERIOD WAS FULLY PAID ON MARCH 16, 2005	
35. Lopez has produced any and all documents evidencing any and all payments he made to Allstate Floridian (identified as one of his creditors) during the time period of June 30, 2005 through April 27, 2006.	Lopez Depo. page 12, lines 1-8; page 13, lines 8-9; Lopez Depo. Exhibit 1. *Note:* Lopez's declaration to the contrary (Oppo Decl at ¶ 26) must be stricken under the Sham Affidavit Rule. The "New Evidence" is unspecified and should be excluded as not timely produced, i.e. the search referred to is one that Lopez was obligated to perform prior to his deposition, and he offers no excuse for his delay.
36. Lopez claims to have been indebted to Allstate Floridian (insurance company) in the approximate amount of $1,900 as of June 30, 2005.	Lopez Depo. Exhibit 17 at page 1. **Lopez UF 36.**

37. However, as of June 30, 2005, Lopez was not indebted to Allstate Floridian indemnity company in any amount because for the premium period then in effect (7/16/04 to 7/16/05), payments for the prior period would have been completed before June 30, 2005, and the obligation to pay for the upcoming period would not begin to accrue until July 17, 2005, with the first payment due in September of that year.	Lopez Depo. page 154, line 25 - page 155, line 20; Lopez Depo. Exhibit 25. Lopez's declaration to the contrary (Oppo Decl at ¶ 14) must be stricken under the Sham Affidavit Rule.
38. The coverage period for the insurance policy maintained by Lopez through Allstate Floridian Indemnity Company ran from 7/16/04 to 7/16/05.	LSK Decl. ¶ 4, Exhibit C, Allstate 010. Lopez's declaration to the contrary (Oppo Decl at ¶ 14) must be stricken under the Sham Affidavit Rule.
39. The final installment for the premium for that period became due on November 21, 2004.	LSK Decl. ¶ 4, Exhibit C, Allstate 010. Lopez's declaration to the contrary (Oppo Decl at ¶ 15) must be stricken under the Sham Affidavit Rule.
40. The final installment was not timely paid, the policy was cancelled for nonpayment of the premium on March 1, 2005 (Allstate 014), and subsequently paid, and reinstated without a lapse of coverage on March 16, 2005 (Allstate 018).	LSK Decl. ¶ 4, Exhibit C, Allstate 010, 014 and 018. **See also Oppo Decl exhibit 2B.**
AMERICAN EXPRESS MAY HAVE BEEN A CREDITOR ON JUNE 30, 2005	
41. Lopez has produced any and all documents evidencing any and all payments he made to American Express (identified as one of his creditors) during the time period of June 30, 2005 through April 27, 2006.	Lopez Depo. page 12, lines 1-8; page 14, lines 10-11; Lopez Depo. Exhibit 1. *Note:* Lopez testimony of Oppo Decl at ¶ 16 must be stricken because it expresses an impermissible legal conclusion, and because statements of account from American Express are the best evidence of the amounts claimed .
42. Lopez asserts that he has an account with American Express (378394980228 3007) upon which he owed $22,000 as of June 30, 2005.	Lopez Depo. Exhibit 17 (creditor list) at page 17-3. **Lopez UF 42.**
43. However, American Express indicates that there was no amount due and owing from Lopez on June 30, 2005.	LSK Decl. ¶ 5, Exhibit D; Lopez Depo. page 155, line 21 - page 160, line 9.
43.1. Despite producing no documents in response to the Subpoena, American Express asserts claims against Lopez.	**Oppo Exhibit 3-1**

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AMERICAN HOME SHIELD WAS NOT A CREDITOR ON JUNE 30, 2005	
44. Lopez asserts that he was indebted to American Home Shield in the amount of $128.00 on June 30, 2005.	Lopez Depo. Exhibit 17 at page 3. **Lopez UF 44.**
45. Lopez has produced any and all documents evidencing any and all payments he made to American Home Shield (identified as one of his creditors) during the time period of June 30, 2005 through April 27, 2006.	Lopez Depo. page 12, lines 1-8; page 14, lines 4-5; Lopez Depo. Exhibit 1. *Note:* See Objection to Oppo Decl ¶ 26 above.
46. The Lopez contract with American Home Shield that was in place on the Petition Date (06/30/05) began on July 16, 2004 and did not expire until July 16, 2005.	American Home Shield - "Contract Home Page" - ASH 0002 (LSK Decl. ¶ 6, Exhibit E). **Lopez UF 46.**
BANK OF AMERICA RECEIVED BOTH PRE-PETITION PREFERENCE PAYMENTS AND VOIDABLE POST-PETITION PAYMENTS	
47. Lopez asserts that as of June 30, 2005, he was indebted to Bank of America in the approximate amount of $2,386.	Lopez Depo. Exhibit 17 at page 2. **Lopez UF 47.**
48. Lopez has produced any and all documents evidencing any and all payments he made to Bank of America (identified as one of his creditors) during the time period of June 30, 2005 through April 27, 2006.	Lopez Depo. page 12, lines 1-8; page 13, lines 12-13; Lopez Depo. Exhibit 1. *Note:* See Objection to Oppo Decl ¶ 26 above.
49. On May 6, 2005, Lopez transferred $50.00 on account of the Bank of America obligation.	LSK Decl., ¶ 7, Exhibit F, page 1. Oppo Decl at ¶ 27 must be stricken because (a) it expresses impermissible lay opinions, unsupported by factual basis; and, (b) as a Sham Affidavit that contradicts his prior testimony regarding his unemployed status. Oppo Decl at ¶ 28 must be stricken as an impermissible lay opinion regarding a legal conclusion (aggravated by the absence of the facts upon which it was predicated).
50. On or about May 17, 2005, Lopez caused $50.00 to be paid to Bank of America on account of the pre-petition obligation.	Lopez Depo. page 172, line 25 - page 173, line 23. **Lopez UF 50.**
51. On June 22, 2005, Lopez paid Bank of America $54.00 dollars on account of the debt he owed to them as identified on his "list of creditors."	Lopez Depo. page 83, lines 1-15; Lopez Depo. Exhibit 7, page 1 (check no.1617, $54.00). **Lopez UF 51.**
52. On June 26, 2005, Lopez transferred $54.00 to Bank of America on account of this debt.	LSK Decl. ¶ 7, Exhibit F, page 2. *Note:* See Objection to Oppo Decl ¶ 27 and 28 above.

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53. On June 28, 2005, Lopez transferred $54.00 to Bank of America on account of his pre-petition debt.	LSK Decl. ¶ 15, Exhibit N, CB 0185. *Note:* See Objection to Oppo Decl ¶ 27 and 28 above.
54. On June 28, 2005, Bank of America received a payment of $54.00 on account of the obligation reflected in the "list of creditors."	Lopez Depo. page 83, line 19 - page 85, line 6; Lopez Depo. Exhibit 7, page 1 (check no. 1617). **Lopez UF 54.**
55. At some point in the month of June, but before June 30, 2005, Lopez made a payment of $54.00 on account of that obligation.	Lopez Depo. page 171, lines 1-17; page 171, line 22 - page 172, line 12; Lopez Depo. Exhibit 27. **Lopez UF 55.**
56. On August 11, 2005, Lopez transferred $292.50 to Bank of America on account of this pre-petition obligation.	LSK Decl. ¶ 7, Exhibit F, page 3. *Note:* Oppo Exhibit 4 must be stricken. It is incomplete, lacks foundation and is irrelevant because it does not identify the account holder.
BANK CARD SERVICES RECEIVED PRE-PETITION PREFERENCE PAYMENTS AND ITS ACCOUNT WAS SUBJECT TO A BONA FIDE DISPUTE	
57. Lopez was indebted to Bank Card Services in some amount as of June 30, 2005.	Lopez Depo. Exhibit 17 at page 2. **Lopez UF 57.**
58. Lopez has produced any and all documents evidencing any and all payments he made to Bank Card Services (identified as one of his creditors) during the time period of June 30, 2005 through April 27, 2006.	Lopez Depo. page 12, lines 1-8; page 13, lines 21-22; Lopez Depo. Exhibit 1. *Note:* See Objection to ¶ 26 above.
59. Bank Card Services received payment on account during the period of April 1 through June 30, 2005.	Lopez Depo. page 175, lines 13-18. **Lopez UF 59.**
60. However, Lopez has a bonafide dispute over this creditor's unilateral position of late charges on the account because the account mechanism required an automatic deduction for at least the minimum amount due on the account. This account is subject to a bonafide dispute.	Lopez Depo. page 175, line 18 - page 177, line 10. Lopez's declaration to the contrary (Oppo Decl at ¶ 17) must be stricken under the Sham Affidavit Rule filed concurrently herewith. The Oppo Decl at ¶ 17 must also be stricken because it appears to be irrelevant. Although vague at the time, the testimony appears to address a past petition resolution of the dispute which would be irrelevant to the issues before the court (except to the extent that a post petition resolution necessarily concedes the existence of a dispute on the petition date.)

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CINGULAR RECEIVED EITHER A PRE-PETITION PREFERENCE PAYMENT OR A VOIDABLE POST-PETITION TRANSFER	
61. Lopez has produced any and all documents evidencing any and all payments he made to Cingular Wireless (identified as one of his creditors) during the time period of June 30, 2005 through April 27, 2006.	Lopez Depo. page 12, lines 1-8; page 13, lines 23-24; Lopez Depo. Exhibit 1. *Note:* See Objection to Oppo Decl ¶ 26 above.
62. On June 19, 2005, Lopez owed Cingular $313.40.	Lopez Depo. page 91, lines 3-11; Lopez Depo. Exhibit 18. **Lopez UF 62.**
63. As of June 19, 2005, Lopez was past due in obligations owed to Cingular in the amount of $151.81.	Lopez Depo. page 91, lines 3-11; Lopez Depo. Exhibit 18; Lopez Depo. Exhibit 9 at page 4. **Lopez UF 63.**
64. At some time between June 19, 2005, and January 10, 2006, the obligation owed to Cingular as of June 19, 2005, was paid in full.	Lopez Depo. page 91, lines 3-20; page 99, line 14 - page 100, line 19; Lopez Depo. Exhibit 9 at page 3. **Lopez UF 64.**
CITICARD RECEIVED PRE-PETITION PREFERENCE PAYMENTS	
65. Lopez has produced any and all documents evidencing any and all payments he made to Citi Cards (identified as one of his creditors) during the time period of June 30, 2005 through April 27, 2006.	Lopez Depo. page 12, lines 1-8; page 14, lines 6-7; Lopez Depo. Exhibit 1. *Note:* See Objection to Oppo Decl ¶ 26 above.
66. On April 18, 2005, Lopez transferred $379.00 to Citicard on account of the pre-petition obligation.	LSK Decl. ¶ 8, Exhibit G, page 2; and Lopez Depo. page 180, lines 7-14; page 181, lines 3-12. *Note:* The Oppo Decl ¶ 18 must be stricken because: (a) Lopez's disagreement with the use of the word "transferred" is irrelevant, and includes the implied, but impermissible legal opinion that the exchange of cash is not a transfer; (b) statements regarding minimum amounts are not the best evidence of the contractual obligation; (c) his legal conclusion arguing ordinary cause is an impermissible lay opinion (agitated by the absence of the facts upon which it is based); and, (d) speculation as to what Stanly knew is objectionable as lacking foundation . Oppo Decl at ¶ 27 must be stricken because (a) it expresses impermissible lay opinions, unsupported by factual basis; and (b) as a Sham Affidavit that contradicts his prior testimony regarding his unemployed status .

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67. On April 19, 2005, Lopez transferred $379.00 to Citibank.	LSK Decl. ¶ 15, Exhibit N, CB 0172; and Lopez Depo. page 180, lines 7-14; page 181, lines 3-12. *Note:* The Oppo Decl ¶ 18 must be stricken because: (a) Lopez's disagreement with the use of the word "transferred" is irrelevant, and includes the implied, but impermissible legal opinion that the exchange of cash is not a transfer; (b) statements regarding minimum amounts are not the best evidence of the contractual obligation; (c) his legal conclusion arguing ordinary cause is an impermissible lay opinion (agitated by the absence of the facts upon which it is based); and, (d) speculation as to what Stanly knew is objectionable as lacking foundation .
68. On May 18, 2005, Lopez transferred $379.00 to Citicard on account of the pre-petition obligation.	LSK Decl. ¶ 8, Exhibit G, page 3; and Lopez Depo. page 180, lines 7-14; page 181, lines 3-12. *Note:* The Oppo Decl ¶ 18 must be stricken because: (a) Lopez's disagreement with the use of the word "transferred" is irrelevant, and includes the implied, but impermissible legal opinion that the exchange of cash is not a transfer; (b) statements regarding minimum amounts are not the best evidence of the contractual obligation; (c) his legal conclusion arguing ordinary cause is an impermissible lay opinion (agitated by the absence of the facts upon which it is based); and, (d) speculation as to what Stanly knew is objectionable as lacking foundation .
69. On May 19, 2005, Lopez transferred $379.00 to Citibank on account of his pre-petition debt.	LSK Decl. ¶ 15, Exhibit N, CB 0181; and Lopez Depo. page 180, lines 7-14; page 181, lines 3-12. *Note:* The Oppo Decl ¶ 18 must be stricken because: (a) Lopez's disagreement with the use of the word "transferred" is irrelevant, and includes the implied, but impermissible legal opinion that the exchange of cash is not a transfer; (b) statements regarding minimum amounts are not the best evidence of the contractual obligation; (c) his legal conclusion arguing ordinary cause is an impermissible lay opinion (agitated by the absence of the facts upon which it is based); and, (d) speculation as to what Stanly knew is objectionable as lacking foundation .

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70. On June 18, 2005, Lopez transferred $379.00 to Citicard on account of the pre-petition obligation.	LSK Decl. ¶ 8, Exhibit G, page 4; and Lopez Depo. page 179, lines 8-23; Lopez Depo. Exhibit 29. *Note:* The Oppo Decl ¶ 18 must be stricken because: (a) Lopez's disagreement with the use of the word "transferred" is irrelevant, and includes the implied, but impermissible legal opinion that the exchange of cash is not a transfer; (b) statements regarding minimum amounts are not the best evidence of the contractual obligation; (c) his legal conclusion arguing ordinary cause is an impermissible lay opinion (agitated by the absence of the facts upon which it is based); and, (d) speculation as to what Stanly knew is objectionable as lacking foundation .
71. On June 20, 2005, Lopez transferred $379.00 to Citibank.	LSK Decl. ¶ 15, Exhibit N, CB 0184. *Note:* The Oppo Decl ¶ 18 must be stricken because: (a) Lopez's disagreement with the use of the word "transferred" is irrelevant, and includes the implied, but impermissible legal opinion that the exchange of cash is not a transfer; (b) statements regarding minimum amounts are not the best evidence of the contractual obligation; (c) his legal conclusion arguing ordinary cause is an impermissible lay opinion (agitated by the absence of the facts upon which it is based); and, (d) speculation as to what Stanly knew is objectionable as lacking foundation .
72. On June 30, 2005, Lopez was indebted to Citi Card/AA Advantage Card in the amount of $32,136.57.	Lopez Depo. page 178, line 23 - page 179, line 23. **Lopez UF 72.**
COASTAL COMMUNITY INSURANCE WAS NOT A CREDITOR ON JUNE 30, 2005	
73. The creditor identified as Coastal Community Insurance is the insurance company that provides flood insurance for the Lopez residence.	Lopez Depo. page 119, line 4-9. **Lopez UF 73.**

74. Lopez has produced any and all documents evidencing any and all payments he made to Coastal Community Insurance (identified as one of his creditors) during the time period of June 30, 2005 through April 27, 2006.	Lopez Depo. page 12, lines 1-8; page 12, line 25 - page 13 line 1; Lopez Depo. Exhibit 1. Lopez's declaration to the contrary (Oppo Decl at ¶ 26) must be stricken under the Sham Affidavit Rule filed concurrently herewith. The "New Evidence" is unspecified and should be excluded as not timely produced, i.e. the search referred to is one that Lopez was obligated to perform prior ro his deposition, and he offers no excuse for his delay.
75. An insurance policy was issued by Coastal Community Insurance for 7/30/04-7/30/05.	LSK Decl. ¶ 9, Exhibit H. **Lopez UF 75.**
76. By August 9, 2004, that premium had been paid in full.	LSK Decl. ¶ 9, Exhibit H, pages 2-4.
77. The premiums for the flood insurance policy provided by Coastal Community Insurance are paid by Lopez's lender from an escrow account, and are not paid by Francis or Madeleine Lopez.	Lopez Depo. page 119, line 4 - page 120, line 6. **Lopez UF 77.**
78. As of June 30, 2005, Lopez was not indebted to Coastal Community Insurance because the insurance for the period beginning July 30, 2004 and ending July 30, 2005, had been paid, and the next coverage period – July 30, 2005 through July 30, 2006 – was not due, owing, or accrued.	Lopez Depo. page 120, lines 7-11; Lopez Depo. Exhibit 10; Lopez Depo. page 121, line 9 - page 125, line 13.
COX COMMUNICATIONS RECEIVED A VOIDABLE POST-PETITION TRANSFER	
79. As of June 30, 2005, Lopez was indebted to Cox Communications in the amount of $112.	Lopez Depo. Exhibit 17, page 2; Lopez Depo. page 135, line 10 - page 136, line 13; Lopez Depo. Exhibit 21. **Lopez UF 79.**
80. Lopez has produced any and all documents evidencing any and all payments he made to Cox Communications (identified as one of his creditors) during the time period of June 30, 2005 through April 27, 2006.	Lopez Depo. page 12, lines 1-8; page 13, lines 16-17; Lopez Depo. Exhibit 1. Lopez's declaration to the contrary (Oppo Decl at ¶ 26) must be stricken under the Sham Affidavit Rule filed concurrently herewith. The "New Evidence" is unspecified and should be excluded as not timely produced, i.e. the search referred to is one that Lopez was obligated to perform prior ro his deposition, and he offers no excuse for his delay.

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81. At some point after June 30, 2005, the entire amount of the pre-petition obligation owed to Cox Communication was paid in full.	Lopez Depo. page 136, lines 16-20; see also page 134, line 23 - page 135, line 3; page 133, line 4-18; Lopez Depo. Exhibit 5, page 4, column 3, row 2 (check no. 1558).
THE CLAIM OF FT. WALTON BEACH MEDICAL CENTER IS THE SUBJECT OF A BONA FIDE DISPUTE	
82. Lopez has produced any and all documents evidencing any and all payments he made to Fort Walton Beach Medical Center (identified as one of his creditors) during the time period of June 30, 2005 through April 27, 2006.	Lopez Depo. page 12, lines 1-8; page 14, lines 12-13; Lopez Depo. Exhibit 1. *Note:* Oppo Decl at ¶ 27 must be stricken because (a) it expresses impermissible lay opinions, unsupported by factual basis; and, (b) as a Sham Affidavit that contradicts his prior testimony regarding his unemployed status .
83. On June 30, 2005, Lopez was indebted to the Fort Walton Beach Medical Center in the approximate amount of $1,600 dollars.	Lopez Depo. Exhibit 17 at page 4. **Lopez UF 83.**
84. However, this obligation is the subject of a bonafide dispute as to Lopez's liability. The dispute arises from the fact that the admitting doctor – and an agent of the creditor – affirmatively represented to Lopez that the treatments being made would be covered by his insurance, when in fact they were not. Lopez's nonpayment of the bill arises from this dispute.	Lopez Depo. page 182, line 5 - page 185, line 4. *Note:* to the extent he deems elusive: Lopez's declaration to the contrary (Oppo Decl at ¶ 20) must be stricken under the Sham Affidavit Rule filed concurrently herewith.
HOUSEHOLD BANK RECEIVED PRE-PETITION PREFERENCE PAYMENTS	
85. On June 30, 2006, Lopez was indebted to Household Bank/ HSBC in the approximate amount of $5,000.	Lopez Depo. Exhibit 17 at page 3. **Lopez UF 85.**
86. Lopez has produced any and all documents evidencing any and all payments he made to Household Bank/HSBC (identified as one of his creditors) during the time period of June 30, 2005 through April 27, 2006.	Lopez Depo. page 12, lines 1-8; page 14, lines 8-9; Lopez Depo. Exhibit 1. *Note:* See Objections to Oppo Decl ¶ 26, above.
87. On or about May 16, 2005, Lopez made a payment on account of the Household Bank obligation in the amount of $50.	Lopez Depo. page 185, lines 5-19; Lopez Depo. Exhibit 31. **Lopez UF 87.**
88. On May 17, 2005, Lopez transferred $50.00 to Household Bank on of his antecedent debt.	LSK Decl. ¶ 10, Exhibit I, page 7. *Note:* **Lopez UF 88.**

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89. The May 17, 2005 payment to Household Bank was $223.91 less than the minimum payment due in that cycle.	LSK Decl. ¶ 10, Exhibit I, page 6. *Note:* Oppo Decl at ¶ 21 must be stricken as hearsay and if admitted lacks foundation as to the identity and authority of the hearsay declarant.
90. Other payments were also made to Household Bank on account of the pre-petition obligation in the months of April and June, 2005.	Lopez Depo. page 185, line 20 - page 186, line 4. **Lopez UF 90.**
KELLY PLANTATION OWNERS ASSOCIATION RECEIVED A VOIDABLE POST-PETITION TRANSFER	
91. Lopez has produced any and all documents evidencing any and all payments he made to Kelly Plantation Owners Association (identified as one of his creditors) during the time period of June 30, 2005 through April 27, 2006.	Lopez Depo. page 12, lines 1-8; Lopez Depo. Exhibit 1. **Lopez UF 91.**
92. On June 30, 2005, Lopez was indebted to the Kelly Plantation Homeowners Association in the amount of $550 on account of home owner association dues.	Lopez Depo.. Exhibit 17, page 17-1; LSK Decl. ¶ 11, Exhibit J, pages 6-7. **Lopez UF 92.**
93. These association bills are generated quarterly, and Lopez has no control over the assessments made.	Lopez Depo. page 188, lines 1-22; page 189, lines 12-20. **Lopez UF 93.**
94. The obligation owed to Kelly Plantation Homeowners Association on June 30, 2005, has subsequently been paid by Lopez.	Lopez Depo. page 190, lines 2-22; Lopez Depo. Exhibit 32. *Note:* Exhibit 7 to the Oppo Decl is not a check. Rather it is a redacted and altered bank statement that shows checks and amounts but not the payee. Accordingly it lacks the necessary foundation of relevence.
95. At some point in time after June 30, 2005, but before December 12, 2005, that obligation had been paid in full.	LSK Decl. ¶ 11, Exhibit J, pages 5 & 7. **Lopez UF 95.**
NORTHWEST FLORIDA DAILY NEWS WAS A CREDITOR ON JUNE 30, 2005, BECAUSE ITS SUBSCRIPTION HAD BEEN PRE-PAID [IT ALSO RECEIVED PRE-PETITION TRANSFERS]	
96. Lopez has produced any and all documents evidencing any and all payments he made to Northwest Florida Daily News (identified as one of his creditors) during the time period of June 30, 2005 through April 27, 2006.	Lopez Depo. page 12, lines 1-8; page 13, lines 6-7; Lopez Depo. Exhibit 1. *Note:* See Objection to Oppo Decl ¶ 26 above.

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97. On May 17, 2005, Lopez paid the Northwest Florida Daily News the sum of $97.39. The payment included past due amounts plus an advance payment for the next three months.	Lopez Depo. page 85, line 21 to page 86 line 6; page 90 line 17-22; Lopez Depo. Exhibit 8 at page 4. **Lopez UF 97.**
98. Of the $97.39 payment to the Northwest Florida Daily News made May 17, 2005, approximately $55.39 was made on account of the past due obligation, and the remaining $42.00 was an advance payment for the next three months.	Lopez Depo. page 85, line 21 to page 86 line 6; page 90 line 17-22; and Exhibit 8, page 1 ("subscription options" in the upper right hand corner) [i.e. subscription rate for 16 weeks (~3 months) equals $42.00]. **Lopez UF 98.**
99. When completing his list of creditors, (Lopez Depo. exhibit 17) Lopez was only estimating an amount due to the Northwest Florida Daily News.	Lopez Depo. page 191, line 13 - page 192, line 8. *Note:* Lopez's declaration to the contrary (Oppo Decl at ¶ 22) must be stricken under the Sham Affidavit Rule filed concurrently herewith.
100. If any amount was in fact owed to Northwest Florida Daily News, it was paid in full post-petition.	Lopez Depo. page 192, lines 9-15. **Lopez UF 100.**
OKALOOSA GAS DISTRICT RECEIVED BOTH PRE-PETITION PREFERENCES AND VOIDABLE POST-PETITION TRANSFERS	
101. Lopez has produced any and all documents evidencing any and all payments he made to Okaloosa Gas District (identified as one of his creditors) during the time period of June 30, 2005 through April 27, 2006.	Lopez Depo. page 12, lines 1-8; page 13, lines 4-5; Lopez Depo. Exhibit 1. *Note:* See objections to Oppo Decl ¶ 26 above.
102. On May 3, 2005, Lopez transferred $171.70 to Okaloosa Gas District.	LSK Decl. ¶ 15, Exhibit N, CB 0173. *Note:* See objection to Oppo Decl ¶ 26 above. Oppo decl at ¶ 28 must be stricken as an impermissible lay opinion regarding a legal conclusion (aggravated by the absence of the facts upon which it was predicated).
103. As of May 19, 2005, Lopez was indebted to the Okaloosa Gas District in the amount of $82.74 (the "5/19/05 obligation").	Lopez Depo. Exhibit 22 at page 1. **Lopez UF 103.**
104. On June 13 or 15, 2005, Lopez paid the sum of $82.74 on account of the 5/19/05 obligation; however the payment was untimely made and a late charge in the amount of $8.27 was imposed.	Lopez Depo. Exhibit 22 at page 2. *Note:* Lopez UF 104. See also objection to Oppo Exhibit 7 above, which applies to exhibit 12 as well.
105. As of June 30, 2005, Lopez was indebted to the Okaloosa Gas District in the amount of $44.33.	Lopez Depo. Exhibit 17, page 1; LSK Decl. ¶ 12, Exhibit K, page 3; and Lopez Depo. Exhibit 17 at page 1; Lopez Depo. Exhibit 22 at page 2; Lopez Depo. Exhibit 12 at page 5. **Lopez UF 105.**

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106. On July 20, 2005, Lopez paid Okaloosa Gas District $44.33 on account of the pre-petition obligation.	LSK Decl. ¶ 12, Exhibit K, page 3. *Note:* See Objection to Oppo Exhibit 7 above.
107. On July 20, 2005, the pre-petition obligation to Okaloosa Gas District was paid in full, however the payment was untimely and a late charge of $3.61 was imposed.	Lopez Depo. page 138, line 8 - page 139, line 4; Lopez Depo. Exhibit 12 at page 4. **Lopez UF 107.**
108. On August 3, 2005, Lopez transferred $34.10 to the Okaloosa Gas District.	LSK Decl. ¶ 15, Exhibit N, CB 0192. *Note:* See Objection to Oppo Decl ¶ 27 and 28 above.
109. On September 29, 2005, Lopez transferred $46.38 to Okaloosa Gas District.	LSK Decl. ¶ 15, Exhibit N, CB 0204; and Lopez Depo. page 83, line 19 - page 85, line 6; Lopez Depo. Exhibit 6, page 3 (check no. 1682). *Note:* See Objection to Oppo Decl ¶ 27 and 28 above.
110. Withdrawn.	
111. Lopez generally pays the Okaloosa Gas District bills from the Compass Bank checking account.	Lopez Depo. page 139, line 17 - page 140, line 12. **Lopez UF 111.**
PROGRESSIVE INSURANCE WAS NOT A CREDITOR ON JUNE 30, 2005	
112. As of June 30, 2005, Lopez claims to have been indebted to Progressive Insurance Company in the amount of $157.20.	Lopez Depo. page 140, lines 18-21; Lopez Depo. Exhibit 17 at page 1. **Lopez UF 112.**
113. Lopez has produced any and all documents evidencing any and all payments he made to Progressive Insurance (identified as one of his creditors) during the time period of June 30, 2005 through April 27, 2006.	LSK Decl. ¶¶ 2-3, Exhibits A-B (hereinafter "Lopez Depo.") page 12, lines 1-8, 20-24; Lopez Depo. Exhibit 1. *Note:* See Objection to Oppo Decl ¶ 26 above.
114. However, as of June 30, 2005, no amount was actually due to Progressive, because the existing policy was in effect at that time and was not up for renewal until August 8, 2005.	Lopez Depo. Exhibit 13 at page 3. *Note:* There is no Exhibit 10 attached to the Oppo Decl.
115. However, had any amount been due and owing to Progressive on June 30, 2005, it was subsequently paid by Lopez.	Lopez Depo. page 142, lines 18-24. **Lopez UF 115.**

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CITIBANK — ON THE QUICKEN PLATINUM CARD — RECEIVED BOTH PRE-PETITION PREFERENCES AND VOIDABLE POST-PETITION TRANSFERS	
116. Lopez has produced any and all documents evidencing any and all payments he made to Quicken Platinum Card (identified as one of his creditors) during the time period of June 30, 2005 through April 27, 2006.	Lopez Depo. page 12, lines 1-8; page 13, lines 1-2; Lopez Depo. Exhibit 1. *Note:* See Objection to ¶ 26 above.
117. On May 2, 2005, Lopez transferred $32.09 to Quicken Platinum Card on account of the pre-petition obligation.	LSK Decl. ¶ 8, Exhibit G, page 5. *Note:* See Objection to ¶ 26 above.
118. On June 27, 2005, Lopez transferred $18.00 to Quicken Platinum Card on account of the pre-petition obligation.	LSK Decl. ¶ 8, Exhibit G, page 7. *Note:* See Objection to Oppo Decl ¶ 27 and 28 above.
119. As of June 30, 2005, Lopez was indebted to Quicken Platinum Select in the approximate amount of $848. At some point between May 24, 2005, and June 23, 2005, Lopez paid $18 on the Quicken Platinum Select card obligation.	Lopez Depo. page 194, line 17 - page 195, line 2; Lopez Depo. Exhibit 33 at page 2. **Lopez UF 119.**
120. On August 1, 2005, Lopez transferred $40.00 to Quicken Platinum Card on account of the pre-petition obligation.	LSK Decl. ¶ 8, Exhibit G, page 8. *Note:* See Objection to Oppo Decl ¶27 and 28 above.
STANLY IS AN INSIDER BECAUSE BOTH HE AND LOPEZ OWN 50% OF PRISM ADVANCE TECHNOLOGIES INC. ("PRISM")	
121. Lopez is a 50% shareholder of Prism.	See ¶ 1 of the Declaration of Francis Lopez in Opposition to Motion for Relief from Stay, Southern District of California U.S. Bankruptcy Court Case No. 03-07777-INV7, Docket Item 45. **Lopez UF 121.**
122. Alan Stanly is a 50% shareholder, officer and director of Prism.	Stanly Decl. at ¶ 2. **Lopez UF 122.**
TEXACO RECEIVED BOTH PRE-PETITION PREFERENCES AND VOIDABLE POST-PETITION TRANSFERS	
123. Lopez has produced any and all documents evidencing any and all payments he made to Texaco/Shell (identified as one of his creditors) during the time period of June 30, 2005 through April 27, 2006.	Lopez Depo. page 12, lines 1-8; page 13, lines 10-11; Lopez Depo. Exhibit 1. *Note:* See Objection to Oppo Decl ¶ 26 above.
124. On April 4, 2005, Lopez transferred $40.00 to Texaco on account of the pre-petition debt.	LSK Decl. ¶ 15, Exhibit N, Compass Bank ["CB"] 0030. *Note:* See Objection to Oppo Decl ¶ 27 and 28 above.

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125. On May 9, 2005, Lopez transferred $20.00 to Texaco on account of the pre-petition debt.	LSK Decl. ¶ 15, Exhibit N, CB 0034. *Note:* See Objection to Oppo Decl ¶ 27 and 28 above.
126. As of June 30, 2005, Lopez was indebted to Texaco/Shell Oil in the amount of $350.20.	Lopez Depo. Exhibit 17 at page 2; Lopez Depo. Exhibit 23 at page 1; Lopez Depo. page 146, lines 2-23; page 147, lines 14-17. **Lopez UF 126.**
127. Texaco accepted payment on accounts from Lopez after June 30, 2005.	Lopez Depo. page 173, line 24 - page 174, line 5. **Lopez UF 127.**
128. On or about August 9, 2005, Lopez paid $50.99 on account of the pre-petition obligation.	Lopez Depo. page 147, lines 18-23; Lopez Depo. Exhibit 23 at page 2. **Lopez UF 128.**
129. On September 26, 2005, Lopez made a payment to Texaco/Shell Oil in the amount of $10 on account of the pre-petition obligation.	Lopez Depo. Exhibit 14 at page 4. **Lopez UF 129.**
130. On October 24, 2005, Lopez made a payment to Texaco/Shell in the amount of 25.00 on account of the pre-petition obligation.	Lopez Depo. Exhibit 14 at pages 4-5. **Lopez UF 130.**
131. The post-petition payments were made from the Compass Bank Checking account.	Lopez Depo. page 148, lines 4-6. *Note:* See Objection to Oppo Decl Exhibit 7 and 12 above. The same objection applies to Exhibit 11.
VALLEY FORGE LIFE INSURANCE IS NOT A CREDITOR BECAUSE LOPEZ NEVER OWED IT ANY MONEY (AND NEITHER DID HIS WIFE, MADELEINE) AS OF JUNE 30, 2005	
132. Lopez has asserted that as of June 30, 2005, he is indebted to the Valley Forge Life Insurance company in the amount of "$0.00($486.00 per year)".	Lopez Depo. Exhibit 17 at page 3. **Lopez UF 132.**
133. Lopez has produced any and all documents evidencing any and all payments he made to Valley Forge Life Insurance (identified as one of his creditors) during the time period of June 30, 2005 through April 27, 2006.	Lopez Depo. page 12, lines 1-8; page 14, lines 2-3; Lopez Depo. Exhibit 1. *Note:* See Objection to Oppo Decl ¶ 27 and 28 above.

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134. However, Lopez is not the account debtor for that obligation.	Lopez Depo. page 195, line 22 - page 197, line 8; see also Lopez Depo. Exhibit 16. *Note:* Oppo Decl ¶ 23 must be stricken because it is not the best evidence of the terms of insurance policy that it references. It also expresses impermissible lay opinion as to the nature of legal obligations created by the policy document (aggravated by the absence of the facts (e.g. policy provisions) upon which the opinion is predicated).
135. Madeleine Lopez — the alleged debtor's spouse — not Lopez himself, is the account debtor obligated to pay the Valley Forge Life Insurance obligation.	LSK Decl. ¶ 13, Exhibit L, pages 2-3. *Note:* See objection to Oppo Decl ¶ 23 above.
136. Madeleine Lopez, the account debtor with respect to the Valley Forge Life Insurance Obligation, pays that obligation through Noveon Systems, Inc. (a corporation in which she is the sole owner/shareholder) of which she is the sole authorized signatory on its bank accounts, and signs all of its checks upon reviewing the same.	LSK Decl. ¶ 13, Exhibit L, page 3 and LSK Decl. ¶ 14, Exhibit M [Madeleine Lopez Depo. Transcript ("Excerpts")], page 36, lines 10-24; page 39, lines 10-17; page 41, lines 20-23; page 53, line 2 - page 54, line 4; and page 54, line 23 - page 55, line 6. **Lopez UF 136.**
137. There was no amount due to Valley Forge Life Insurance Company on June 30, 2006, because that annual premium had been paid at or shortly after February 5, 2005.	Lopez Depo. Exhibit 34 (annual renewal premium due February 5, 2005); Lopez Depo. page 198, line 24 - page 199, line 18. *Note:* See Objection to Oppo Decl ¶ 23 above.
THE VERIZON CLAIM WAS DISPUTED AS OF JUNE 30, 2005, BUT SUBSEQUENTLY PAID BY A VOIDABLE POST-PETITION TRANSFER	
138. Lopez has produced any and all documents evidencing any and all payments he made to Verizon Wireless (identified as one of his creditors) during the time period of June 30, 2005 through April 27, 2006.	Lopez Depo. page 12 lines 1-8; page 13, lines 14-15; Lopez Depo. Exhibit 1. *Note:* See Objection to Oppo Decl ¶ 26 above.
139. On or about April 21, 2005, Verizon Wireless forwarded to Lopez an invoice for charges totaling $262.47.	Lopez Depo. Exhibit 24 (the "4/21/05 invoice"). **Lopez UF 139.**
140. Lopez disputed the validity and amount of the 4/21/05 invoice to the extent that it exceeded $35.	Lopez Depo. page 151, line 5 - page 152, line 21. *Note:* Oppo Decl ¶ 24 admits the existence of the dispute (and does not contend that it was resolved before June 30, 2005).

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141. As of June 30, 2005, the disputed portion of the Verizon obligation – in excess of $200 – had not been paid; however the disputed obligation was ultimately paid by Lopez on August 3, 2005.	Lopez Depo. page 153, line 17 - page 154, line 19; Lopez Depo. Exhibit 15 at page 3. **Oppo Decl ¶ 24.**
WAYNE WISE RECEIVED A PRE-PETITION PREFERENCE	
142. Lopez has produced any and all documents evidencing any and all payments he made to Wayne Wise (identified as one of his creditors) during the time period of June 30, 2005 through April 27, 2006.	Lopez Depo. page 12, lines 1-8; page 13, line 35 - page 14, line 1; Lopez Depo. Exhibit 1. **Lopez UF 142.**
143. Lopez obligation to Wayne M. Wise is memorialized by a promissory note dated June 16, 2004.	Lopez Depo. page 133, line 11-16; Lopez Depo. Exhibit 19. **Lopez UF 143.**
144. The obligation owed by Lopez to Wayne Wise is unsecured.	Lopez Depo. page 110, line 21 - page 113, line 10.
145. On May 17, 2005, Lopez paid Wayne Wise the sum of $900 for the interest that had accrued under the June 16, 2004, promissory note.	Lopez Depo. page 113, line 17 - page 115, line 22. *Note:* See Objection to Oppo Exhibit 12 above.
146. Other than the payment of $900 interest paid on May 17, 2005, no other payments have been made on the promissory note to Wayne M. Wise.	Lopez Depo. page 201, lines 20-23. **Lopez UF 146.**
147. That payment was not made in accordance with the terms of the promissory note (i.e. it was less than the full amount due).	Lopez Depo. Exhibit 19. *Note:* Oppo Decl ¶ 25 must be stricken because it violates the Parole evidence Rule; and because it is not the best evidence of the oral agreement supposedly made by Wise.
UNION BANK OF CALIFORNIA RECEIVED BOTH PRE-PETITION PREFERENCES AND AVOIDABLE POST-PETITION TRANSFERS	
148. Lopez has produced any and all documents evidencing any and all payments he made to Union Bank of California (identified as one of his creditors) during the time period of June 30, 2005 through April 27, 2006.	Lopez Depo. page 12, lines 1-8; page 13, lines 18-19; Lopez Depo. Exhibit 1. *Note:* See Objection to Oppo Decl ¶ 26 above.
149. In April, May, and June of 2005, Lopez paid $1,000 per month to Union Bank on account of its compromise/settlement agreement.	Lopez Depo. page 204, line 3. **Lopez UF 149.**
150. On April 13, 2005, Lopez transferred $500.00 to Union Bank of California on account of the pre-petition debt.	LSK Decl. ¶ 15, Exhibit N, CB 0168. *Note:* See Objection to Oppo Decl ¶ 27 and 28 above.

151. On April 13, 2005, Lopez made a second $500.00 transfer to Union Bank on account of the pre-petition debt.	LSK Decl. ¶ 15, Exhibit N, CB 0169. *Note:* See Objection to Oppo Decl ¶ 27 and 28 above.
152. On May 18, 2005, Lopez transferred $1,000.00 to Union Bank of California on account of his pre-petition debt.	LSK Decl. ¶ 15, Exhibit N, CB 0180. *Note:* See Objection to Oppo Decl ¶ 27 and 28 above.
153. As of June 30, 2005, Lopez was indebted to Union Bank in an amount at least equal to $4,000.	Lopez Depo. Exhibit 17 at page 2. **Lopez UF 153.**
154. That obligation reflected a settlement compromise agreement with Union Bank.	Lopez Depo. page 202, lines 1-16. **Lopez UF 154.**
155. Since June of 2005, Union Bank has received monthly payments that have completely satisfied Lopez's compromise/settlement obligation, and all payments were made from the Compass Bank account.	Lopez Depo. page 204, line 10 - page 207, line 2; Lopez Depo. Exhibit 6, page 3 (check no. 1683); Lopez Depo. Exhibit 6, page 4 (check no. 1676); Lopez Depo. Exhibit 7, page 1 (check no. 1620). **Lopez UF 155.**
156. On July 8, 2005, Union Bank received a payment from Lopez in the amount of one thousand dollars on account of the debt owed to that entity and referred to on the debtor's "list of creditors."	Lopez Depo. page 83, line 1 - page 85, line 6; Lopez Depo. Exhibit 7, page 1 (check no. 1620, $1,000 dated 6/30/05 and cleared on 7/8/05); and LSK Decl. ¶ 15, Exhibit N, CB 0186. **Lopez UF 156.**
157. On August 8, 2005, Lopez transferred $1,000.00 to Union Bank of California on account of his pre-petition debt.	LSK Decl. ¶ 15, Exhibit N, CB 0191. *Note:* See Objection to Oppo Decl ¶ 27 and 28 above.
158. On September 8, 2005, Union Bank of California received a payment in the amount of $1,000 from Lopez on account of the obligation reflected in the "list of creditors."	Lopez Depo. page 83, line 19 - page 85, line 6; Lopez Depo. Exhibit 6, page 4, column 1, row 2 (check no. 1676); and LSK Decl. ¶ 15, Exhibit N, CB 0199. **Lopez UF 158.**
159. On October 6, 2005, Union Bank of California received a payment in the amount of $1,000 from Lopez.	Lopez Depo. page 83, line 19 - page 85, line 6; Lopez Depo. Exhibit 6, page 3 (check no. 1683); and LSK Decl. ¶ 15, Exhibit N, CB 0206. **Lopez UF 159.**
160. On or about October 31, 2005, Lopez transferred $1,000.00 to Union Bank of California on account of his pre-petition debt.	LSK Decl. ¶ 15, Exhibit N, CB 0210. *Note:* See Objection to Oppo Decl ¶ 27 and 28 above.
161. On November 7, 2005, Union Bank received a payment from Lopez in the amount of one thousand dollars on account of the obligation owed to it as a creditor identified on the debtor's "list of creditors."	Lopez Depo. page 83, line 1 - page 85, line 6; Lopez Depo. Exhibit 7, page 3 (check no. 1688 for $1,000). **Lopez UF 161.**

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162. On December 12, 2005, Union Bank received a payment from Lopez in the amount of one thousand dollars on account of the obligation owed to it as a creditor identified on the debtor's "list of creditors."	Lopez Depo. page 83, line 1 - page 85, line 6; Lopez Depo. Exhibit 7, page 2 (check no. 1692 for $1,000); and LSK Decl. ¶ 15, Exhibit N, CB 0213. **Lopez UF 162.**
163. On January 11, 2006, Lopez transferred $1,000.00 to Union Bank of California on account of his pre-petition debt.	LSK Decl. ¶ 15, Exhibit N, CB 0216. *Note:* See Objection to Oppo Decl ¶ 27 and 28 above.
LOPEZ HAS PREVIOUSLY TESTIFIED THAT HE HAD NO MORE THAN SEVEN CREDITORS	
164. In May of 2005, Lopez was indebted to his father Frederick in the amount of approximately $20,000.	Lopez Exam at page 21 lines 2 to 11.
165. In May, 2005, Lopez was indebted to his brother Mike in the amount of approximately $17,000.	Lopez Exam at page 22 lines 6 to 13.
166. In May, 2005, Lopez estimated his total credit card debt to be approximately $60,000. In May of 2005, the only creditors that Lopez could think of were his Mastercard from CitiBank, his Fleet credit card, maybe the Amex card, his father and his brother (a total of five).	Lopez Exam at page 22 lines 18 to 21 (reference page 19 line 17 through page 22 line 21).
167. On further examination, Lopez was able to recall an additional loan in the amount of $15,000 he took from his friend, Wayne Wise.	Lopez Exam at page 28 lines 11 to 22.
168. As of May 9, 2005, that debt was still outstanding.	Lopez Exam at page 28 lines 21 to 22.
169. On further examination, Lopez admits there might be a medical debt owed to the Fort Walton Beach Medical Center (that would bring the total creditors list to seven).	Lopez Exam at page 58 lines 19 to 23.
170. He also indicates that there are "a couple of others that I can't recall the names of them".	Lopez Exam at page 59 lines 3 to 5.
LOPEZ HAS NO SECURED DEBT	
171. The original purchase money obligation secured by the Lopez residence at 310 Sand Myrtle Trail, Destin, Florida, had been previously paid off.	Lopez Depo at page 103 lines 12 to 21 and page 104 lines 7-12.

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172. Mrs. Lopez is the only borrower on the obligation secured by the current first mortgage against the Lopez residence.	Lopez Depo at page 104 lines 7-12 and page 104 line 17 to page 105 line 15; page 108 lines 16-24.
173. Mrs. Lopez is the only borrower on the obligation secured by the current second mortgage against the Lopez residence.	Lopez Depo at page 116 line 7 to page 117 line 8.
174. Lopez is not responsible for the purchase money debt obligation on the 2005 Chevy Suburban.	Lopez Exam at page 42 lines 7 to 15.
175. There is no outstanding debt associated with the 1997 Ford.	Lopez Exam at page 42 lines 16 to 17.
THERE IS SIGNIFICANT EVIDENCE TO SHOW THAT LOPEZ IS NOT GENERALLY PAYING HIS DEBTS AS THEY COME DUE	
176. Lopez himself admits that he does not always pay his debts as they come due.	Declaration of Francis Lopez submitted in support of his Motion for Summary Judgment ("Lopez SJM Decl") at page 14 lines 24-25.
177. Lopez himself admits that he is deliberately not paying the judgment against him held by Stanly.	Lopez SJM Decl at page 14 lines 26-27.

Dated: June 21, 2006

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UNITED STATES BANKRUPTCY COURT

SOUTHERN DISTRICT OF CALIFORNIA

In Re: FRANCIS J. LOPEZ, Alleged Debtor	Case No. 05-05926-PBINV Involuntary Chapter 7 **EVIDENTIARY OBJECTIONS AND MOTION TO STRIKE PORTIONS OF THE DECLARATION OF FRANCIS J. LOPEZ MADE IN SUPPORT OF ALLEGED DEBTOR'S OPPOSITION TO PETITIONING CREDITORS' MOTION FOR SUMMARY JUDGMENT** Date: June 26, 2006 Time: 2:00 p.m. Judge: The Honorable Peter W. Bowie Ctrm: 4

TO: THE HONORABLE PETER W. BOWIE, UNITED STATES BANKRUPTCY JUDGE:

The Petitioning Creditors herein respectfully supplement the evidentiary objections referenced in the Creditors' Separate Statement of Undisputed Material Facts in Opposition to Alleged Debtor's Motion for Summary Judgment by submitting the following supplemental evidentiary objections, and hereby move to strike the specified portions of the "Declaration of

Francis Lopez" submitted in support of Alleged Debtor's Opposition to Petitioning Creditors' Motion for Summary Judgment (the "Lopez Declaration").

REQUEST FOR RULING ON OBJECTIONS AND MOTION TO STRIKE

The Petitioning Creditors respectfully request that this Court issue rulings on the following evidentiary objections and motion to strike prior to ruling on the merits of Petitioning Creditors' Motion for Summary Judgment.

EVIDENTIARY OBJECTIONS

Any and all evidence proffered in opposition to a Motion for Summary Judgment must be admissible pursuant to the Federal Rules of Evidence ("FRE"), made applicable herein by Rule 9017 of the Federal Rules of Bankruptcy Procedure.[1] Based on that mandate, the following improper portions of the Lopez Declaration should be stricken:

TESTIMONY	OBJECTIONS
1. **Paragraph 8, in its entirety:** "The statement that I am entitled to a homestead exemption of $75,000 is false. In fact, the property is held as tenancy by the entirety, and is exempt."	**Improper Opinion.** Lopez is not qualified to proffer the legal conclusion that his residential real property is "exempt." FRE 701. **Lack of Foundation.** Lopez fails to identify the facts upon which the proffered opinion is based. Without this foundation, the testimony is inadmissible. FRE 104.
2. **Paragraph 9, page 2, line 25 through page 3, line 1:** "'The net apparent equity in the residence to an estate' is not an accounting term I am familiar with, but if Mr. Keehn's contention is that the residence has equity of $405,000, he is mistaken. If the residence sells for $1.2 million, there is a real estate commission fee of approximately $60,000, plus closing costs and taxes. A more realistic estimate of the equity in the residence is $250,000. . ."	**Lack of Foundation.** Lopez fails to identify the facts upon which he bases his "estimate" of the equity in his residence. Without this essential foundation, the testimony is inadmissible. FRE 104.

[1] FRCP 56(e) [FRBP 9014(c)]; *U.S. v. Crisp*, 190 F.R.D. 546, 550 (E.D.Cal. 1999).

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TESTIMONY	OBJECTIONS
3. **Paragraph 9, page 3, lines 1 - 2:** "...but again, this residence is exempt property as it pertains to my possible bankruptcy estate."	**Improper Opinion.** Lopez is not qualified to proffer the legal conclusion that his residential real property constitutes "exempt property." FRE 701. **Lack of Foundation.** Lopez fails to identify the facts upon which the proffered opinion is based. Without this foundation, the testimony is inadmissible. FRE 104.
4. **Paragraph 10, page 3, lines 5 - 6:** "...the residence is exempt as being held as a tenancy by the entirety..."	**Improper Opinion.** Lopez is not qualified to proffer the legal conclusion that his residential real property is "exempt." FRE 701. **Lack of Foundation.** Lopez fails to identify the facts upon which the proffered opinion is based. Without this foundation, the testimony is inadmissible. FRE 104.
5. **Paragraph 11, page 3, lines 11 - 13:** "...I would point out that I have a potential claim against him for invasion of privacy, and he has already been convicted of that crime in California."	**Irrelevant.** This first phase of the bifurcated proceedings focuses exclusively on the number of Lopez's qualifying creditors under 11 U.S.C. §303(b). Thus, any evidence regarding Lopez's "potential" State law claims against Stanly, and/or other litigation involving the parties, is irrelevant and improper. FRE 402.
6. **Paragraph 12, page 3, lines 16 - 18:** "My father, Frederic, lent me and my wife $35,000, and we signed a promissory note for it. This note amount included $20,000 that he had previously lent us."	**Sham Affidavit Doctrine.** To the extent that this testimony regarding the existence of a promissory note is proffered to support Lopez's contention that he has more than 12 Creditors, it contradicts prior deposition testimony stating that no such promissory note exists. [See, Ex. A to "Declaration of Alan Stanly in Opposition to Alleged Debtor's Motion for Summary Judgment and Order Dismissing Involuntary Petition" filed on 6/14/05, pp.18-19] Therefore, the testimony must be stricken under the Sham Affidavit Doctrine. *Kennedy v. Allied Mut. Ins. Co.*, 952 F.2d 262, 266 (9th Cir. 1991) ("The general rule in the Ninth Circuit is that a party cannot create an issue of fact by an affidavit contradicting his prior deposition testimony").
7. **Paragraph 13, page 3, lines 22 - 24:** "My father, Frederic, lent me and my wife $35,000, and we signed a promissory note for it. This note amount included $20,000 that he had previously lent us."	**Sham Affidavit Doctrine.** To the extent that this testimony regarding the existence of a promissory note is proffered to support Lopez's contention that he has more than 12 Creditors, it contradicts prior deposition testimony stating that no such promissory note exists. [See, Ex. A to "Declaration of Alan Stanly in Opposition to Alleged Debtor's Motion for Summary Judgment and Order Dismissing Involuntary Petition" filed on 6/14/05, pp.18-19] Therefore, the testimony must be stricken under the Sham Affidavit Doctrine. *Kennedy v. Allied Mut. Ins. Co.*, 952 F.2d 262, 266 (9th Cir. 1991) ("The general rule in the Ninth Circuit is that a party cannot create an issue of fact by an affidavit contradicting his prior deposition testimony").

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TESTIMONY	OBJECTIONS
8. Paragraph 18, page 4, lines 23 - 25: "These payments were minimum payments required to keep the account in good standing, and were made in the ordinary course of business."	**Improper Opinion.** Lopez is not qualified to proffer the legal conclusion that certain payments were made "in the ordinary course of business" for purposes of this Court's 11 U.S.C. §303(b) analysis. FRE 701. **Lack of Foundation.** Lopez fails to sufficiently identify the facts upon which the proffered opinion is based. Significantly, Lopez never specifies when payments to this creditor ordinarily came due, and when the alleged "minimum payments" were made. Without this essential foundation, the testimony is inadmissible. FRE 104.
9. Paragraph 18, page 4, line 25 through page 5, line 2: "Further, while we are on the subject of Citibank, Mr. Stanly was well aware of the existence of this creditor, despite his assertion in his original pleadings in this case that he was only aware of 3 creditors, all located in California. Thus, Stanly was aware of the existence of at least two additional creditors, American Express and Citibank, prior to the filing of the involuntary petition."	**Irrelevant.** This first phase of the bifurcated proceedings focuses exclusively on the number of Lopez's qualifying creditors under 11 U.S.C. §303(b). Thus, any evidence regarding Lopez's speculation as to Stanly's state of mind prior to filing this involuntary petition, is irrelevant and improper. FRE 402. **Lack of Foundation.** Lopez fails to sufficiently identify the facts upon which the proffered opinion regarding Stanly's "awareness" and state of mind is based. FRE 104.

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TESTIMONY	OBJECTIONS
10. Paragraph 20, in its entirety: "Mr. Keehn contends that my obligation to Ft. Walton Beach Medical Center is the subject to [sic] a bona fide dispute. This needs clarification. While the doctor did tell me that a certain procedure should be covered by insurance, the doctor had no knowledge of my insurance coverages, and when I did check with my insurance carrier, that particular procedure was not covered. I was informed that I had to get clearance in advance for that procedure which I did not do. Further, because it was an emergency room situation, I felt that the procedure needed to be done regardless of insurance coverage. The average American has many issues like this regarding health insurance coverage, and we all understand that whatever amounts are not covered by insurance are the responsibility of the patient."	**Sham Affidavit Doctrine.** To the extent that this testimony is proffered to support Lopez's contention that the debt to this creditor is undisputed, it contradicts prior deposition testimony which clearly states that this debt is in fact "disputed." [Lopez Depo., pages 183, line 19 - page 184, line 25.] Therefore, the testimony must be stricken under the Sham Affidavit Doctrine. *Kennedy v. Allied Mut. Ins. Co.*, 952 F.2d 262, 266 (9th Cir. 1991) ("The general rule in the Ninth Circuit is that a party cannot create an issue of fact by an affidavit contradicting his prior deposition testimony"). **Improper Opinion.** Lopez is not qualified to opine on the health insurance "issues" encountered by the "average American," and/or the "average American's" "understanding" of those issues. FRE 701. **Lack of Foundation.** Lopez fails to sufficiently identify the facts upon which he bases the proffered opinion pertaining to health insurance "issues" encountered by the "average American," and/or the "average American's" "understanding" of those issues. FRE 104. **Irrelevant.** The health insurance "issues" and payment habits of the "average American" are irrelevant to this Court's determination of whether or not Lopez's outstanding debt to this creditor is "disputed" for purposes of 11 U.S.C. §303(b). FRE 402.
11. Paragraph 21, page 5, lines 21 - 22: "However, I called Household Bank, and they informed me that a minimum payment of $50 would suffice."	**Hearsay.** This alleged telephonic statement is offered to show the truth of the matter asserted, and therefore constitutes inadmissible hearsay. FRE 801, 802.

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TESTIMONY	OBJECTIONS
12. Paragraph 23, in its entirety: "Sometime in 2001 or 2002, I took out an insurance policy and named my wife Madeleine as the beneficiary. This was a 20-year term policy written by Valley Forge Life Insurance. The payments were for $486 per annum, or the choice of semi-annual or quarterly payments. This is a 20 year obligation, and thus, I listed them as a creditor. While Mr. Keehn contends that I owe them nothing as of June 30, 2005, I must point out that this is not a one-year, terminating policy. The obligation is to make payments each quarter, semi-annually, or annually to keep the policy in force. In other words, when purchasing a long-term policy, the insurance contract itself sets forth payments for the entire term of the insurance policy, not just for one year."	**Sham Affidavit Doctrine.** To the extent that this testimony is proffered to support Lopez's contention that he – rather than his wife – is the account debtor on this debt, it contradicts his prior deposition testimony which states that: (a) he does not know why the premium statement for this debt was addressed/sent solely to his wife; and (b) his wife may in fact be the "sole owner" of the policy. [Lopez Depo., page 198, lines 3-8]. Therefore, the testimony must be stricken under the Sham Affidavit Doctrine. *Kennedy v. Allied Mut. Ins. Co.*, 952 F.2d 262, 266 (9th Cir. 1991) ("The general rule in the Ninth Circuit is that a party cannot create an issue of fact by an affidavit contradicting his prior deposition testimony").
13. Paragraph 24, in its entirety: "Regarding the creditor Verizon Wireless: Although there was a disagreement with the amount of the April 2005 bill, this matter was handled to the mutual satisfaction of both me and Verizon Wireless, and the account was paid in full. In fact, I kept this account for cellular service until November 2005, and there were no disputed amounts or any amounts claimed owing by Verizon at that time. Exhibit 15 shows the continuation of the account, and the closing statement showing $0.00 balance. Also, note the payments made by Noveon Systems, Inc., my employer."	**Sham Affidavit Doctrine.** To the extent that this testimony is proffered to support Lopez's contention that this debt to Verizon was not disputed ***as of the petition date***, it contradicts his prior deposition testimony [Lopez Depo., page 97, line 8; page 151, lines 7-22 (Verizon dispute lasted from 04/2005 though 8/2005)], and must be stricken under the Sham Affidavit Doctrine. *Kennedy v. Allied Mut. Ins. Co.*, 952 F.2d 262, 266 (9th Cir. 1991) ("The general rule in the Ninth Circuit is that a party cannot create an issue of fact by an affidavit contradicting his prior deposition testimony").

TESTIMONY	OBJECTIONS
14. Paragraph 25, page 6, lines 19 - 21: "Mr. Wise and I made an oral agreement to extend the promissory note indefinitely, with the understanding that my wife and I would pay him $900 for interest, and that the amount of the loan would be repaid once the house was sold."	**Best Evidence Rule.** This testimony regarding a subsequent parol agreement directly contradicts the payment terms embodied in the promissory note itself, stating that the note was to be repaid ***upon refinancing or*** sale of the Florida home, and those payment terms may be significant to this Court's ruling herein. Therefore, the testimony must be stricken as a violation of the Best Evidence Rule. FRE 1002.
15. Paragraph 26, in its entirety: "Mr. Keehn has made many statements to the effect of 'Lopez has produced any and all documents evidencing any and all payments he made to (insert Creditor name here)'. During the course of the last two months, and since Mr. Keehn's last document production request, I have been involved with my wife Madeleine, in a lawsuit brought in San Diego by Mr. Stanly against her. During the course of the last few weeks, I have had to search extensively through boxes and boxes of old paperwork, and have been able to locate files that are pertinent to my answers in response to Mr. Keehn's 'Separate Statement of Undisputed Facts'. Most of the new evidence in response to Keehn's misstatements are a result of this recent effort."	**Sham Affidavit Doctrine.** This testimony contradicts Lopez's prior deposition testimony verifying that all responsive documents had been produced [See, Movants' UF 35, 41, 45, 48, 58, 61, 65, 74, 80, 82, 86, 91, 96, 101, 113, 116, 123, 133, 138, 142, 148], and must be stricken under the Sham Affidavit Doctrine. *Kennedy v. Allied Mut. Ins. Co.*, 952 F.2d 262, 266 (9th Cir. 1991) ("The general rule in the Ninth Circuit is that a party cannot create an issue of fact by an affidavit contradicting his prior deposition testimony").
16. Paragraph 27, page 7, lines 7 - 10: "This is a false contention. Payments made to my creditors were not "transfers" from property of the bankruptcy estate. They were all transfers made from wages or otherwise property acquired after the Involuntary Petition was filed."	**Improper Opinion.** Lopez is not qualified to proffer the legal conclusion that certain payments were not "voidable post-petition transfers" for purposes of this Court's 11 U.S.C. §303(b) analysis. FRE 701. **Lack of Foundation.** Lopez fails to sufficiently identify the facts upon which the proffered opinion is based. FRE 104.
17. Paragraph 28, page 7, lines 13 - 14: "Payments to my creditors were payments for debts in the ordinary course of business and made in the ordinary course of business."	**Improper Opinion.** Lopez is not qualified to proffer the legal conclusion that certain payments were made "in the ordinary course of business" for purposes of this Court's 11 U.S.C. §303(b) analysis. FRE 701. **Lack of Foundation.** Lopez fails to sufficiently identify the facts upon which the proffered opinion is based. FRE 104.

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TESTIMONY	OBJECTIONS
18. Paragraph 29, in its entirety: "When I originally responded to the involuntary petition, I listed all of the creditors I was aware of, other than family members. During my search of records in response to petitioning creditors' Motion for Summary Judgment, I have come across another creditor that I did not list in my original response, Curd Galindo and Smith. I owed this creditor $900.00 as of the date of the June 30, 2005 filing of the involuntary petition. (See Exhibit 16, statements from Curd Galindo and Smith)."	**Sham Affidavit Doctrine.** This testimony contradicts Lopez's prior deposition testimony verifying that all creditors had been identified. *Kennedy v. Allied Mut. Ins. Co.*, 952 F.2d 262, 266 (9th Cir. 1991) ("The general rule in the Ninth Circuit is that a party cannot create an issue of fact by an affidavit contradicting his prior deposition testimony").
19. Paragraph 31, in its entirety, and the referenced Exhibit 2: "Attached hereto as Exhibit 2 is a true and correct copy of correspondence from Allstate regarding the home insurance of my wife and me."	Exhibit 2 has been redacted, and is therefore not a "true and correct copy." **Lack of Foundation.** Lopez fails to identify why the redaction was necessary, and/or the general subject matter of the redacted portion of the document. Without that foundation, the document is not reliable support for the proffered testimony. FRE 104.
20. Paragraph 45, in its entirety, and the referenced Exhibit 16: "Attached hereto as Exhibit 16 is a true and correct copy of a statement from Curd, Galindo & Smith dated June 2, 2005."	**Sham Affidavit Doctrine.** This testimony and the referenced Exhibit 16 directly contradict Lopez's prior deposition testimony verifying that all creditors had been identified. *Kennedy v. Allied Mut. Ins. Co.*, 952 F.2d 262, 266 (9th Cir. 1991) ("The general rule in the Ninth Circuit is that a party cannot create an issue of fact by an affidavit contradicting his prior deposition testimony").

Dated: June 21, 2006

ROBBINS & KEEHN
A Professional Corporation

By: //s// L. Scott Keehn
L. Scott Keehn
Leslie F. Keehn
Attorneys for Petitioning Creditors

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DOCKET NUMBER 76

UNITED STATES BANKRUPTCY COURT

SOUTHERN DISTRICT OF CALIFORNIA

Minute Order

Hearing Information:

Debtor:	FRANCIS J. LOPEZ
Case Number:	05-05926-PB7 **Chapter:** 7 INVOLUNTARY
Date / Time / Room:	MONDAY, JUNE 26, 2006 02:00 PM DEPARTMENT 4
Bankruptcy Judge:	PETER W. BOWIE
Courtroom Clerk:	MARILYN WILKINSON
Reporter / ECR:	COLLETTA JOHNSON

Matters:

1) ALLEGED DEBTOR'S MOTION FOR SUMMARY JUDGMENT & ORDER DISMISSING INVOLUNTARY PETITION

2) PETITIONING CREDITORS' MOTION FOR SUMMARY JUDGMENT ON PHASE 1 OF BIFURCATED INVOLUNTARY PETITION, OR ALTERNATIVELY, SUMMARY ADJUDICATION OF FACTS NOT SUBJECT TO MATERIAL DISPUTE

3) STATUS CONFERENCE ON INVOLUNTARY PETITION AND ANSWER (fr. 5/4/06)

Appearances:

M. Jonathan Hayes, ATTORNEY FOR Francis J. Lopez
L. Scott Keehn, ATTORNEY FOR ALAN STANLY
Mr. Stanly & Mr. Lopez, present

Disposition:

1 & 2) Simultaneous Briefs not to exceed 5 pages re: § 549 transfers to be filed and served on 7/7/06. No reply. Matter will then be under submission. Contested.
3) To be re-set, if needed.

cc: Barbara

6/26/2006 3:38:14PM

DOCKET NUMBER 77

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Attorneys for Alleged Debtor Francis Lopez

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SO. DIST. OF CALIF.

UNITED STATES BANKRUPTCY COURT

SOUTHERN DISTRICT OF CALIFORNIA

SAN DIEGO DIVISION

In Re: FRANCIS J. LOPEZ, Alleged Debtor	CASE NO. 05-05926-PBINV Involuntary Chapter 7 **BRIEF OF ALLEGED DEBTOR RE BURDEN OF PROOF UNDER SECTION 549** **MSJ Hearing** Date: June 26, 2006 Time: 2:00 p.m. Ctrm: 4

TO THE HONORABLE PETER W. BOWIE, UNITED STATES BANKRUPTCY JUDGE, TO PETITIONING CREDITORS ALAN STANLY, NORTHWEST FLORIDA DAILY NEWS:

I. ARGUMENT

Alleged Debtor Francis J. Lopez ("Lopez") offered evidence in his Answer filed nearly one year ago in this case, his Motion for Summary Judgment, and in opposition to the MSJ of Alan Stanley that he had 23 creditors on June 30, 2005 and since there is only one Petitioning Creditor, this case must be dismissed. Stanly has asserted that there are fewer than 12 creditors and therefore a single Petitioning Creditor is sufficient.

Of the 23 creditors, Stanly argued that nine should be excluded because they received avoidable transfers under Section 549 of the bankruptcy code. He alleged that eleven of the creditors received avoidable preference payments under Section 547. Of the 23 total, eleven were supposedly excludable *solely* on the basis of Section 547 or 549 or both. The only evidence Stanly has ever offered that these creditors received avoidable transfers is that the creditors, in fact, actually received payments either pre-petition or post petition.

The burden of proof in a Motion for Summary Judgment is on the moving party. Summary judgment is proper only if there is no genuine issue as to any material fact and the moving party is entitled to a judgment as a matter of law. *Celotex Corp. v. Catrett, 477 U.S. 317 (1986); Anderson v. Liberty Lobby, Inc. 477 U.S. 242 (1986).* When the court considers a motion for summary judgment, it must resolve all ambiguities and draw all reasonable inferences in favor of the party against whom summary judgment is sought. *Hamilton v. Smith, 773 F.2d 461, 466 (2d Cir. 1985).*

As to Section 547, there is no showing in the MSJ that Lopez was insolvent when the payment was made or that the payment rendered him insolvent. There was no showing that the payment was not made in the ordinary course of business. There is no showing that the property transferred pre-petition was property "of the debtor." Indeed, virtually all of the payments were very small regular monthly payments to credit card companies or utility companies. All of the supposedly preferential transfers are less than $600 (probably in total excluding Union Bank) which excludes the transfers from avoidance under Section 547(c)(8).

As to Section 549, the bankruptcy code states:

> (a) Except as provided in subsection (b) or (c) of this section, the trustee may avoid a transfer *of property of the estate*--
>
> (1) that occurs after the commencement of the case; and

(2)

(A) that is authorized only under section 303(f) or 542(c) of this title;

or

(B) that is not authorized under this title or by the court.

As this is a chapter 7 involuntary case, post petition wages are not property of the estate. Proceeds of post-petition loans are not property of the estate. In fact, any property acquired after the petition date is not property of the estate unless it fits within one of the exceptions in Section 541(a)(5).

Federal Rule of Bankruptcy Procedure 6001 states: Burden of Proof as to Validity of Postpetition Transfer:

> Any entity asserting the validity of a transfer under § 549 of the Code shall have the burden of proof.

At first blush it would appear that the burden is on Lopez to prove that the post petition transfers are not avoidable. A "transfer under Section 549" however, for purposes of Section 549, means *a transfer of property of the estate*. Stanly has the burden of proving that the post petition transfers were "of property of the estate." Once he does that, Lopez has the burden of proving that the transfers were otherwise valid. This makes complete sense. Property of the estate is not supposed to be transferred without court approval or other authorization in the bankruptcy code. Typically, the person asserting the validity of the transfer is the transferee. Given the fact that it is probable that a complained of transfer of property of the estate was not authorized, it is logical that the burden should be on the recipient of the transfer.

In re Countryside Manor, Inc. 239 B.R. 443 (Bkrtcy.D.Conn.,1999.) the court said,

> there is no genuine issue as to the material facts sufficient to establish the elements of an avoidance action under Section 549 -that there was an unauthorized post-petition transfer of property of the estate. The defendant

concedes that it received the checks at issue, that they are drawn on the account of the debtor-in-possession, that they were received after the bankruptcy petition was filed, and that purchase of the parts made by the defendant are not referred to in the court's cash collateral orders.

The burden of proving that the transfer at issue was valid, *therefore*, shifts to the defendant. F.R.B.P 6001 ("Any entity asserting the validity of a transfer under Section 549 of the Code shall have the burden of proof."). (italics added)

In other words, once Stanly establishes that there was an unauthorized transfer of property of the estate, Lopez must establish that the transfer was "valid."

In re Kingsley, 208 B.R. 918 (8th Cir.BAP,1997), the court said:

Section 549 involves a four-part inquiry. *The trustee must show* that: (1) after commencement of the bankruptcy in question; (2) property of the estate; (3) was transferred; and (4) the transfer was not authorized by the bankruptcy court or by a provision of the Bankruptcy Code. (italics added)

In re Calstar, Inc., 159 B.R. 247 (Bkrtcy.D.Minn.,1993), the court said:

Thus, to avoid the transfer, *the trustee must prove*:

1. That property of the estate was transferred;
2. after the filing of a petition;
3. which was not authorized by the Code or by the court. (italics added)

It would be difficult to imagine why the trustee could set forth a *prima facie* case of avoidable post petition transfer merely by showing that a payment was made to a creditor post petition. The code says a transfer of property of the estate. In other words, a transfer of something that was under the control of the court.

Irrespective of the burden, Lopez has produced evidence as to five of the creditors that the post petition payments were made by his wife or Noveon. These creditors are Bank of America, Cingular Wireless, Cox Communications, Kelly Plantation Owners, Okalossa Gas District. As to Union Bank, the payments came from a post petition loan. The payments to Quicken Platinum, Texaco and Verizon[1] came from post petition wages or employee expense reimbursements of Lopez. Stanly acknowledges that Lopez borrowed $35,000 from his father since June 30, 2005 (UDF# 32). Stanly acknowledges that Lopez earned $12,500 just in 2006 (UDF#13). He acknowledges that Lopez has received some $50,000 from Noveon since its inception (UDF#14).

If the court will allow additional evidence, Lopez will provide proof that he had little to no funds on hand on June 30, 2005 from which the post petition transfers of property of the estate could have been made. The MSJ of Stanly admits this in UDF#26 "Other than his residence, Lopez has no assets of any significant value (more than $10,000 equity). Lopez will also, if allowed, provide further evidence of his post petition earnings and borrowings to show that all of the the post petition payments were not property of the estate and therefore not avoidable.

II. CONCLUSION

Alleged Debtor prays that this court grant him summary judgment and dismiss this case, and for other orders which are just.

Dated: July 6, 2006

By: ____________________
M. Jonathan Hayes
Attorney for Alleged Debtor Francis Lopez

[1] There are no "undisputed facts" offered by Stanly with respect to Verizon.

Signature by the attorney constitutes a certification under Fed. R. Bankr. P. 9011 that the relief provided by the order is the relief granted by the court.

Submitted by:

By: ______________________________
M. Jonathan Hayes
Attorney for Francis J. Lopez

PROOF OF SERVICE

I, MJ Hayes, declare:

I am a resident of the State of California and over the age of eighteen years, and not a party to the within action; my business address is 21800 Oxnard St., Suite 840, Woodland Hills, CA 91367. On July 6, 2006, I served the within documents:

BRIEF OF ALLEGED DEBTOR RE BURDEN OF PROOF UNDER SECTION 549

X by email

X by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at Los Angeles, California addressed as set forth below.

.. bv causing personal deliverv bv of the document(s) listed above to the person(s) at the address(es) set forth below.

.. by placing the document(s) listed above in a sealed _______________ envelope and affixing a pre-paid air bill, and causing the envelope to be delivered to a _______________ agent for delivery

.. by personally delivering the document(s) listed above to the person(s) at the address(es) set forth below.

L. Scott Keehn
Robbins & Keehn, APC
530 B Street, Suite 2400
San Diego, CA 92101

I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Executed on July 6, 2006, at Woodland Hills, California.

MJ Hayes

DOCKET NUMBER 78

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Attorneys for **Petitioning Creditors**

UNITED STATES BANKRUPTCY COURT

SOUTHERN DISTRICT OF CALIFORNIA

In Re: **FRANCIS J. LOPEZ,** Alleged Debtor	Case No. 05-05926-PBINV Involuntary Chapter 7 **PETITIONING CREDITORS' SUPPLEMENTAL MEMORANDUM OF POINTS AND AUTHORITIES RE BURDEN OF PROOF WITH RESPECT TO POST PETITION TRANSFERS MADE AVOIDABLE BY 11 U.S.C. § 549** **[NO FURTHER HEARING SET]** Judge: The Honorable Peter W. Bowie Ctrm: 4

TO: **Honorable Judge Peter W. Bowie, Judge of the United States Bankruptcy Court**

The Petitioning Creditors herein (hereinafter the "PC") respectfully submit this "Supplemental Memorandum, Etc." to address the issues of the Burden of Proof (hereinafter the "BOP") regarding the avoidability of transfers under 11 U.S.C. § 549:

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I. DISCUSSION

A. Who Has BOP and How it is Shifted. We Began this analysis with FRBP Rule 6001:

> **Rule 6001. Burden of Proof as to Validity of Postpetition Transfer**
> Any entity asserting the validity of a transfer under §549 of the Code shall have the burden of proof.

This means that where a party is defending a §549 claim, by asserting that the transferred property was not property of the estate, that party has the burden of proving the non-estate nature of the property.[1] Each fact necessary to a party's defense against the assertion of a 549 avoidance claim falls on the defending party.[2] That also means that a party that contends that an element necessary to avoid the transfer does not exist bears the burden of proving that point as well.[3]

Once the party with initial BOP establishes its *prima facie* case, the BOP shifts to the other party.[4] However, the burden of initially producing evidence may be shifted to a party who is in a better position to provide the necessary information.[5] Since Lopez is in the superior position of establishing that post-petition payments were made from sources other than "property of the estate" ("POE"), that burden would shift to him in any event.

The BOP is also shifted by applicable presumptions. When the presumption is established it shifts the burden of going forward with the evidence to the other party to rebut or meet that presumption.[6]

Where state law supplies the rule of decision with respect to an element of a claim or defense, the state law presumptions apply (FRE 302, including Adv. Comm. Notes). Here, whether or not the post-petition payments were made from POE is an element of both claim and defense. The nature of property rights is determined in accordance with the applicable state law.[7] Accordingly, state law presumptions regarding the nature of property rights are applicable, and operate to shift the BOP.

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[1] *In re Gandara*, 257 B.R. 549, 552-553 (Bkrtcy. D. Mont., 2000) [specifically putting that burden on the defending party]; *In re Auxano Inc.*, 96 B.R. 957, 961 (Bancr. W.D. Mo. 1989); *In re Woodward*, 234 B.R. 519, 523, FN2 (Bkrtcy. N.D. Okla., 1999) [noting that many courts concur that the trustee has the initial burden to establish that an initial transfer took place and that the burden then shifts to the party defending the transfer to show that it was not property of the estate]. While the PC recognize that there is language in other cases that would place the BOP of showing property transferred was estate property on the trustee, that divergent view is rendered moot here by virtue of the presumption that payments were made from the debtor's property discussed below.

[2] *In re Mary-Go-Round Enterprises, Inc.*, 400 F.3d 219, 225 (C.A. 4 (Md.), 2005); *40235 Washington Street Corp v. W.C. Lusardi*, 177 F.Supp2d 1090, 1097 (S.D. Cal, 2001).

[3] *In re Beshears*, 196 B.R. 464, 466 (Bkrtcy. E.D. Ark., 1996).

[4] *McDonnell Douglas Corp v. Green*, 411 U.S. 792, 802 (1973); *Frazier v. Ruminger*, 27 F.3d 828, 831 (2d Cir., 1994).

[5] *GTS Industries S.A. v. S/S "Havtjelv"*, 68 F.3d 1531, 1535 to 1536 (2nd Cir. 1995).

[6] FRE 301; *St. Mary's Honor Ctr. v. Hicks*, 509 U.S. 502, 507 to 508 (1993); *Creswell Trading Co., Inc., v. United States*, 15 F.3d 1054, 1060 (Fed. Cir. 1994); *Valance v. Wisel*, 110 F.3d 1269, 1279 (7th Cir. 1997).

A Debtor is ***presumed to own funds over which he has control.*** "[A]ny funds under the control of the debtor, regardless of the source, are properly deemed to be the debtor's property, and any transfers that diminish that property are subject to avoidance."[8] The funds in a bank account will be deemed property of the estate where the debtor is entitled to access, and exercise control over, those funds.[9] As indicated in PC's Reply Memorandum, Lopez had complete control over payments made by Noveon which payments are also governed by presumption.

Although Florida is not a community property state,[10] its concept of "Marital Assets" is broader than traditional community property concepts, and brings a broader range of property in as POE as defined by §541. Under Florida's "Marital Asset" concept, all assets acquired and liabilities incurred by either spouse subsequent to the date of the marriage, and not specifically established as nonmarital assets or liabilities, are ***presumed to be marital assets and liabilities.***[11] That includes any assets acquired during the marriage individually, by either spouse, or jointly by them.[12] In a dissolution proceeding all of the Marital Assets must be distributed equitably, but not necessarily equally, in accordance with the court's sound discretion.[13] That presently vested potential distribution entitlement to any of the Marital Assets makes all of them POE within the

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[7] *Butner v. United States*, 440 U.S. 48, 52-59 (1979); *In re Safeguard Self Storage*, 2 F.3d 967, 970 (9th Cir. 1993).

[8] *In re Chase & Sanborn Corp.*, 813 F.2d 1177, 1181 (11th Cir.1987).

[9] *In re Danowski*, 320 B.R. 886, 888 (Bkrtcy. N.D.Ohio 2005) ("the amount in a debtor's bank account at the commencement of the case is property of the estate").

[10] *Green v. Green*, 442 So.2d 354, 355 (Fla.App.1 Dist., 1983).

[11] F.S.A. § 61.075 (5); *Gladstone v. Gladstone*, 733 So.2d 1090, 1091 (Fla.App. 4 Dist.,1999).

[12] *Wertkin v. Wertkin*, 763 So.2d 461, 463 (Fla.App. 4 Dist.,2000).

[13] F.S.A. § 61.075 (1); *Green v. Green*, 442 So.2d 354, 355 (Fla.App. 1 Dist., 1983)

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broad definition of §541. Finally, Florida law clearly places the BOP to demonstrate that property acquired during the marriage is "*non-marital*" on the party asserting that character (*Gladstone v. Gladstone,* supra).

Accordingly, all of the transfers made from the Sun Trust Bank account which is in the name of Madeline Lopez (Exhibits 4-3, 7-1, 11 and 12 to the Lopez Decl.) were transfers of "Marital Assets", which would have been POE.

B. The PC Have Met Their BOP. Post-petition payments which are avoidable under §549 will not be included in the §303(b)(2) count.[14] The elements of an avoidable §549 transfer are: "(1) a transfer; (2) of property of the estate; (3) which occurred post-petition; and (4) was not authorized by the Bankruptcy Code or the court."[15]

1. **Elements (1) and (3).** These elements are uncontested. The parties agree that post-petition payments were made on pre-petition obligations.[16]

2. **Element (2).** "[W]here a debtor has paid existing debts, the funds used as payment are ***presumed to be the debtor's property absent some proof to the contrary*** offered by those defending the transfer."[17] Courts recognize that this presumption is "logical" because "the debtor, after all, was under an existing obligation to make the payment" (*Id.*). This presumption applies to best and most appropriately serve the fundamental purpose of the avoidance statutes – "fairness among the creditors."[18]

> Thus, the operative impluse of § 549(b) is meant to curb abuses and protect the estate from dissipation during the "gap" period. In corollary intendment, it seeks to preserve the Code's objective by preserving the quality of distribution to all creditors, including the rights of a "gap" transferee for value.[19]

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[14] 11 U.S.C. §303(b)(2); *In re Rimell*, 111 B.R. 250, 256-257 (Bkrtcy. E.D. Mo. 1990).

[15] *In re Allen*, 217 B.R. 952, 955 (Bkrtcy. M.D.Fla. 1998), *In re APF*, 264 B.R. 344 (Bkrtcy D. Del., 2001).

[16] See, Creditors' Separate Statement of Undisputed Material Facts in Reply to Lopez's Opposition to Summary Judgment Motion ("RSUF"), ¶56 (Bank of America); ¶64 (Cingular); ¶81 (Cox); ¶94 (Kelly Plantation); ¶100 (Northwest Florida Daily News); ¶106 (Okaloosa Gas); ¶120 (Quicken); ¶¶128-130 (Texaco); ¶141 (Verizon); ¶¶155-163 (Union Bank).

[17] *In re Chase & Sanborn Corp.*, 813 F.2d 1177, 1181 (11th Cir. 1987).

[18] *In re Chase & Sanborn Corp.*, supra, 813 F.2d at 1181.

[19] *In re Brooklyn Overall Co., Inc.*, 57 B.R. 999, 1003 (Bkrtcy. E.D.N.Y. 1986).

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Here, PC met their BOP upon the showing that certain pre-petition debts owed by Lopez were paid post-petition.[20] That establishes the presumption that the funds used to make those payments were property of Lopez's estate.[21] In *In re Brown*, the Bankruptcy Appellate Panel upheld the Bankruptcy Court's factual finding that certain creditors could not be included in the §303(b) count because they had received post-petition payments which were avoidable under §549:

> The parties stipulated that seven of the debts in question were Brown's, and that those debts were paid after [the Petition Date]. Brown offered no evidence to prove that the bills were paid with other than estate property. This evidence is sufficient to support the trial court's finding.[22]

3. Element (4). Lopez bears the burden of establishing the validity of the post-petition payments, and he has not met it. Once the post-petition transfers were challenged as unauthorized, the BOP shifted to Lopez to defend the transfers. PC are not required to affirmatively prove a negative – that the post-petition transfers were not authorized by the Code.[23] They may rely on the evidentiary presumptions discussed above, and simply point out the lack of evidence validating the transfers (*Id.*). The BOP then shifts to Lopez to establish the validity of the transfers with competent evidence.[24] Failure to meet that burden requires summary adjudication against Lopez.[25]

Lopez's argument that post-petition payments were made with non-estate property is not supported by evidence. The estate-property presumption described above can only be rebutted if Lopez presents competent and compelling evidence of the source of the funds used for the post-petition payments (if made with non-estate property and/or post-petition earnings).[26] His contention that payments were made from his post-petition wages contradicts his deposition testimony[27] and must be stricken under the Sham Affidavit Rule.

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[20] See, RSUF, ¶56 (Bank of America); ¶64 (Cingular); ¶81 (Cox); ¶94 (Kelly Plantation); ¶100 (Northwest Florida Daily News); ¶106 (Okaloosa Gas); ¶120 (Quicken); ¶¶128-130 (Texaco); ¶141 (Verizon); ¶¶155-163 (Union Bank).

[21] *In re Brown*, 21 B.R. 701, 703 (1st Cir. BAP 1982).

[22] *In re Brown*, 21 B.R. 701, 703 (1st Cir. BAP 1982).

[23] *In re Woodward*, 234 B.R. 519, 523 (Bkrtcy. N.D.Okla. 1999); see also generally, *In re Tran*, 297 B.R. 817, 835 (Bkrtcy. N.D.Fla. 2003) (the Code should not be interpreted to put a party "in the difficult and anomalous position of trying to prove a negative by showing the absence of any justification" for the debtor's transactions).

[24] FRBP 6001; *In re Allen*, supra, 217 B.R. at 955.

[25] *In re Rainbow Music, Inc.*, 154 B.R. 559, 563 (Bkrtcy. N.D.Cal. 1993) (failure to present evidence in defense of the 549 transfer "is fatal").

Since evidence of the source of the challenged payments is "*peculiarly available*" to Lopez, this Court should ***presume*** that Lopez did not produce any such evidence because it "*would be damaging*" to his asserted defense.[28] Summary adjudication against Lopez is appropriate (*Brown*, supra at P. 703).

The only defense Lopez raised with regard to the §549 transfers was that the payments were made in the ordinary course of Lopez's business. He bears the BOP on his "ordinary course" defense.[29] He failed to show evidence of the elements of that defense,[30] and that raised the presumption that he has no such favorable evidence.[31]

II. CONCLUSION Applying these principles to the record before the court, the PC's burden has clearly been carried.[32] The PC are entitled to summary judgment as prayed.

Dated: July 7, 2006 //s// L. Scott Keehn

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[26] *In re Bressman*, 327 F.3d 229, 239 (3rd Cir. 2003) (Party alleging validity of post-petition transfer defeated summary judgment because it "came forward with persuasive evidence. . . that the challenged payments came from non-estate sources"); *In re Rimell*, supra, 111 B.R. at 255-257. Requiring Lopez to establish the character of the property used to fund the post-petition payments is in accord with Florida law. *See, Ellingham v. Florida Dept. of Children and Family Services*, 896 So.2d 926, 927 (Fla.App. 2005) ("The party seeking to assert the affirmative defense has the burden of proof as to that defense"); *United States v. Knox*, 68 F3d 990, 1000 (7th Cir. 1995).

[27] Lopez Depo at P 45, ln. 23-25, p 47, ln 14 to p 48 ln 9, and p 55, ln 18 to p 62, ln 23 [testimony admitting no post-petition wages].

[28] *In re Osborne*, 257 B.R. 14, 19 FN.7 (Bkrtcy. C.D.Cal. 2000). Florida law is in accord. See, *Metropolitan Dade County v. Hernandez*, 708 So.2d 1008, 1009 (Fla.App. 1998) ("Where one party has peculiar knowledge or control of the evidence on a material matter, then the burden rests on that party to produce the evidence"); *Gray v. Callahan*, 197 So. 396, 400 (Fla.1940) (defendant's failure to present certain evidence in his possession constituted "an admission that its introduction would not have been of any value to the defendant").

[29] *Phoenix American Life Ins. Co. v. Devan*, 308 B.R. 237, 241 (Dist. Ct. Md. 2004).

[30] *Phoenix American Life Ins. Co. v. Devan*, supra, 308 B.R. at 241.

[31] *In re Osborne*, supra, 257 B.R. at 19 FN.7.

[32] See RSUF No. 56 (BOA); No. 64 (Cingular); No. 81, Ref. Depo testimony only (Cox); No. 94 (Kelly); Nos. 106 and 107 (Okaloosa); No. 120 and (Quicken); Nos. 127 to 131 (Texaco); No. 141 (Verizon); and, Nos. 155 to 163 (UBOC).

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DOCKET NUMBER 80

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UNITED STATES BANKRUPTCY COURT

FOR THE SOUTHERN DISTRICT OF CALIFORNIA

In re:	**CASE NO. 05-05926-PBINV**
	Involuntary Chapter 7
FRANCIS J. LOPEZ,	**RICHARD KIPPERMAN'S JOINDER IN INVOLUNTARY PETITION FOR FRANCIS J. LOPEZ**
Alleged Debtor.	**Dept.:** Four **Judge:** Hon. Peter W. Bowie

RICHARD KIPPERMAN ("Petitioner"), creditor of alleged debtor Francis J. Lopez, ("Lopez"), hereby joins the Involuntary Petition filed by Alan Stanly commencing the above-captioned case, and in support thereof states:

1. Petitioner maintains a principal place of business at PO Box 3939, La Mesa, California 91944-3939. Petitioner is owed the principal amount of $30,968.57 by Lopez as of the date hereof (the "Claim"). The Claim is for unpaid fees and costs incurred by Petitioner as a receiver appointed by stipulation in which Lopez was one of the stipulating parties that requested my appointment as receiver. Petitioner did not acquire his Claim by transfer from another entity.

2. Petitioner's Claim is non-contingent and not subject to a bona fide dispute as to its existence, nature or amount.

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3. Petitioner requests that an order for relief be entered against Lopez under Chapter 7 of Title 11 of the United States Code.

4. Petitioner declares under penalty of perjury that the foregoing is true and correct according to the best of its knowledge, information and belief.

Dated: 20 July 06

By: RICHARD KIPPERMAN

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DOCKET NUMBER 86

WRITTEN DECISION NOT FOR PUBLICATION

ENTERED 9/26/06
FILED
SEP 26 2006
CLERK, U.S. BANKRUPTCY COURT
SOUTHERN DISTRICT OF CALIFORNIA
BY [illegible] DEPUTY

UNITED STATES BANKRUPTCY COURT

SOUTHERN DISTRICT OF CALIFORNIA

In re FRANCIS J. LOPEZ, Alleged Debtor.	Case No. 05-05926-PBINV ORDER ON MOTION FOR SUMMARY JUDGMENT

On September 30, 2005, Alan Stanly commenced this case by filing an involuntary petition against alleged debtor, Francis Lopez. Northwest Florida Daily News later joined in the petition. Lopez challenged the petition on the ground that three petitioning creditors were necessary under Bankruptcy Code § 303(b)(1) because twelve or more entities held claims against him. On June 26, 2006, the Court held a hearing on the parties' cross-motions for summary judgment on the issue of the number of holders of claims against Lopez for the purposes of § 303(b). The Court requested additional briefing and took the matter under submission.

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On July 20, 2006, before the Court ruled on the motions, Richard Kipperman, who asserts a claim against Lopez in the amount of $30,968.57, filed a joinder in the involuntary petition. On the same date Stanly filed a "Suggestion of Mootness" contending that the issue regarding whether there are a sufficient number of creditors to support an involuntary petition is now moot as a result of Mr. Kipperman's joinder, thereby raising to three the number of petitioning creditors and satisfying the requirements for the filing of an involuntary bankruptcy petition regardless of the number of creditors included in the "Section 303" count.

On the Court's direction Lopez filed a response to the Suggestion of Mootness. He contends that Mr. Kipperman (and Northwest Florida Daily News for that matter) does not qualify as a petitioning creditor.

Number of Holders of Claims

Bankruptcy Code Section 303(b) provides:

> (b) An involuntary case against a person is commenced by the filing with the bankruptcy court of a petition under chapter 7 or 11 of this title-
>
> (1) by three or more entities, each of which is either a holder of a claim against such person that is not contingent as to liability or the subject of a bona fide dispute as to liability or amount, or an indenture trustee representing such a holder, if such noncontingent, undisputed claims aggregate at least $12,300 more than the value of any lien on property of the debtor securing such claims held by the holders of such claims;
>
> (2) if there are fewer than 12 such holders, excluding any employee or insider of such person and any transferee of a transfer that is voidable under section 544, 545, 547, 548, 549, or 724(a) of this title, by

one or more of such holders that hold in the aggregate at least $12,300 of such claims;

On September 7, 2005, Lopez filed an answer to the petition alleging that he had more than 12 creditors, and thus there were an insufficient number of petitioners. On September 19, 2005, Lopez filed a declaration listing those creditors -- twenty-two in all.

Stanly, on the other hand, argues that many of the creditors asserted by Lopez do not qualify to be counted in the determination of whether there are 12 or more creditors for various reasons. Of the twenty-two alleged holders of claims, Stanly contends that:

-- seven did not hold a claim against Lopez as of the petition date;

- one (Alan Stanly) is an excluded "insider" of Lopez;

-- three are "disputed";

-- nine received postpetition transfers voidable under § 548; and

-- eleven received preferences voidable under § 547.

The Court has considered the arguments and evidence submitted by Stanly and Lopez regarding each of the alleged creditors and finds as follows with respect to each.

Allstate Floridian:

As to this creditor, Stanly contends that it did not hold a claim as of June 30, 2005 -- the date of the petition. Lopez counters that prepetition the premium amount was adjusted upward so there was a balance owing of $134. The Court finds that according to the premium statement, which Lopez provided, an additional amount was owing as of the petition date -- that is, the covered period July, 2004 through July, 2005 was not necessarily paid in full as Stanly suggests. The Court finds that this creditor should be counted.

American Express:

Stanly initially contended that American Express did not hold a claim as of the petition date. However, in his reply Stanly concedes that this creditor should be counted.

American Home Shield:

Again, Stanly contends that this creditor did not hold a claim as of the petition date. In his opposition Lopez argued that as of the petition date he was indebted to this creditor in the amount of $128. However, Lopez provides no evidence of such and does not even mention this creditor in his declaration. It appears from Exhibit E to the Declaration of L. Scott Keehn in support of Petitioning Creditors' Motion for Summary Judgment (Keehn Dec.) that this creditor's policy was paid up through 7/16/05. Since Lopez has provided no evidence to the contrary, the Court finds that this creditor should not be counted.

B of A:

Stanly contends that this creditor should not be counted because it received preferential payments which are voidable under § 547 and postpetition payments voidable under § 548. Lopez admits that minimum payments were made on this account, but argues that they were made in the ordinary course of business.

While the "ordinary course" defense might apply to the alleged preferences, there is no comparable defense to the admitted postpetition transfers. It is clear Lopez made postpetition payments to this creditor. While they are authorized under § 303(f), they are nevertheless voidable. See § 549(a)(2). Section 549(b) provides that in an involuntary case such a transfer may not be avoided to the extent value is given in exchange. However, Lopez has provided no evidence of any such value being received. Thus, the Court finds that this creditor should not be counted.

Bankcard Services:

Stanly contends that this claim is subject to a bona fide dispute as to the late fees. Stanly also argues that this creditor should not be counted because it received preferential payments which are voidable under § 547.

Lopez has provided evidence that the issue over late fees had been resolved. Lopez also argues that the payments were made in ordinary course in order to keep the account current.

The Court finds that Stanly has failed to establish that there is a bona fide dispute. In the deposition transcript of Lopez (175:18-177-13), upon which Stanly relies, Lopez merely says that he probably does not agree that the $39 late fee should have been charged and that it was probably resolved on another statement. The Court does not find that this establishes that the claim is subject to a bona fide dispute.

Stanly argues that Lopez failed to provide evidence of his payment practices with respect to this creditor or creditor's requirements. However, the Court is comfortable accepting Lopez's assertion that this credit card company requires minimum monthly payments in the ordinary course. Stanly has provided no evidence that Lopez made unusual payments to this creditor. The Court finds that this creditor should be counted.

Cingular Wireless:

Stanly contends that this creditor should not be counted because it received preferential payments which are voidable under § 547 and postpetition payments voidable under § 548. Lopez admits that payments were made on this account, but argues that they were made in the ordinary course of business and to maintain service. Lopez also contends that most of the payments were made by Noveon - his employer.

As with B of A, discussed above, while the "ordinary course" defense might apply to the alleged preferences, there is no comparable defense to the admitted postpetition transfers. It is clear Lopez made postpetition payments to this creditor. While they are authorized under § 303(f), they are nevertheless voidable. See § 549(a)(2). Section 549(b) provides that in an involuntary case such transfer may not be avoided to the extent value is given in exchange. However, Lopez has provided no evidence of any such value being received. Further, the evidence indicates that Lopez owed a prepetition balance and that the entire bill was paid postpetition. Thus, to the extent any postpetition value was given by Cingular, the amount of the payments would have exceeded this value and thus some portion would be recoverable -- the exception under § 549(b) is only "to the extent any value ... is given." Finally, Lopez provides no evidence that any of the payments were made by his employer.

Thus, the Court finds that this creditor should not be counted.

Citicards:

Stanly contends that this creditor should not be counted because it received preferential payments which are voidable under § 547. Lopez admits that payments of $379/month were made, but argues that they were made in the ordinary course to keep the account current per an agreement with Citicards. The payments were direct debits from his checking account.

Unlike that discussed in connection with Bankcard Services above, this does not appear to be a typical minimum payment situation where the minimum amount due changes based upon the prior month's activity. Rather, this appears to be an arrangement Lopez reached with this creditor to repay an overextended account. Lopez contends that he paid $379/month. However, Stanly's undisputed evidence indicates that Lopez made two payments each month. Again, Lopez has failed to establish that this is a typical ordinary course arrangement. The Court finds that this creditor should not be counted.

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Coastal Community Insurance:

Stanly contends that this creditor did not hold a claim as of the petition date -- that it was paid by Lopez's lender. Lopez argues in his brief that the policy had been renewed as of June 30, 2005 so payments would continue to come due. However, Lopez's declaration is silent as to this alleged creditor. Based upon Lopez's deposition testimony (see Depo. Trans. at 119-25) it does not appear that any amount was owing as of the petition date. The premium for coverage through July, 2005 had been paid. The statement Lopez relied upon in the deposition was for coverage beginning after the petition was filed. See Depo. Trans. at Ex. 20. The Court finds that this creditor should not be counted.

Cox Communications:

Stanly contends that this creditor received postpetition payments in full satisfaction of its obligation. Lopez contends in his brief that payments on this account were made in the ordinary course of business and to maintain service and that most of the payments were made by Noveon -- Lopez's employer. However, Lopez's declaration does not provide any evidence whatsoever with regard to this creditor including of his payment practices with respect to this creditor or payment by his employer. All Lopez does is attach the statement.

It seems clear Lopez made postpetition payments to this creditor as authorized under § 303(f). Under § 549(a)(2) these payments would be voidable. Lopez argues that he received value in exchange, but has provided no evidence thereof. Further, the evidence indicates that Lopez owed a prepetition balance (the monthly statement is as of 7/22/05) and that the entire bill was paid postpetition. Thus, to the extent any postpetition value was given by Cox, the amount of the payments would have exceeded this value and thus some portion would be recoverable. Lopez also provides no evidence that payments were made by his employer. The Court finds that this creditor should not be counted.

Ft. Walton Medical Center:

Stanly argues that this claim is subject to a bona fide dispute as to liability. Lopez denies that there is a dispute. Rather, he explains, he initially thought the services would be covered by insurance (because the doctor told him they would), but subsequently accepted that they were not because he did not get prior approval.

The Court finds that Stanly has failed to establish that there is a bona fide dispute with regard to this claim. Stanly characterizes Lopez's deposition testimony as admitting that he thought the claim was in dispute. The Court does not agree. All Lopez said at his deposition is that he was sore that the doctor told him the claim would be covered by insurance and he later learned that it was not. He uses the term "dispute" but never actually claims he was not liable on the claim. See Depo. Trans. at 182:5-185:4. The Court finds that this creditor should be counted.

Household Bank:

Stanly contends that this creditor should not be counted because it received preferential payments voidable under § 547. Lopez contends that the payments were made for debts incurred in ordinary course and that they were made to keep the account current per an agreement with Household Bank.

Like the payment made to Citicards, these do not appear to be a typical minimum payment situation where the minimum amount due changes based upon the prior month's activity. Rather, Lopez made sporadic payments of differing amounts less than the minimum monthly amount. Lopez has not provided evidence that these payments were made in the ordinary course. The Court finds that this creditor should not be counted.

Kelly Plantation Owners Assoc.

Stanly argues that this creditor should not be counted since it received postpetition payments in full satisfaction of its claim. Lopez contends that these are homeowners association fees owing on his residence and that they were incurred and paid in the ordinary course. He also contends that they are frequently paid from his wife's checking account.

As noted above, there is no ordinary course defense to postpetition payments recoverable under § 549. Lopez made postpetition payments to this creditor as authorized under § 303(f). Under § 549(a)(2) these payments are voidable. Lopez provided neither argument nor evidence that he received value in exchange for the payments. Even if he did receive value (common ground maintenance or security for example), the evidence indicates that Lopez owed a prepetition balance and that the entire bill was paid postpetition. Thus, to the extent any postpetition value was given the amount of the payments would have exceeded this value and thus some portion would be recoverable. The Court finds that this creditor should not be counted.

M. Northwest Florida Daily News

In his declaration Lopez admits that this prepetition claim was paid postpetition. The Court therefor finds that this creditor should not be counted.

Okaloosa Gas District:

Lopez admits that he made postpetition payments to this creditor, but that they were made to maintain utility service to his residence. The exhibit provided by Stanly indicates that the payments were less than $50.00/month. The Court finds that continued utility service constitutes value received in exchange for such payments. Accordingly, the Court finds that this creditor should be counted.

Progressive Insurance:

Stanly contends that this creditor did not hold a claim as of the petition date - that the premiums for the period had been paid prepetition. Lopez has provided no evidence to establish the existence of any claim owing to this alleged creditor. The Court finds that this creditor should not be counted.

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Citibank/Quicken Platinum Card:

Lopez admits that he made postpetition payments to this creditor and provides no evidence that value was received in exchange. Accordingly, the Court finds that this creditor should not be counted.

Alan Stanley:

Stanly contends that he, Stanly, cannot be counted because he is an "insider" as he and Lopez each own 50% of Prism. The analysis is a bit convoluted, but Stanly appears to be correct.

The definition of "insider" includes an "affiliate." § 101(31)(E). An "affiliate" includes a corporation owned more than 20% by the debtor. § 101(2)(B). Thus, Prism is an "affiliate" and "insider" of Lopez. Section 101(31)(E) also provides that an "insider of an affiliate" of the debtor is also an insider of the debtor. Stanly, as owner of more than 20% of Prism, is an insider of Prism under § 101(2)(B), and thus an insider of Lopez under § 101(31)(B) because he is an insider of an affiliate of Lopez.

So, Stanly is a "holder of a claim against" Lopez and thus qualifies to be a petitioning creditor under § 301(b)(1). However, for the purposes of determining the number of creditors, he is excluded as an insider under § 301(b)(2). The Court finds that this creditor is not to be counted.

Texaco/Shell:

Lopez admits that he made postpetition payments to this creditor and provides no evidence that value was received in exchange. The Court finds that this creditor should not be counted.

Union Bank:

Again Lopez admits making postpetition payments to this creditor, and provides no evidence that value was received in exchange. The Court finds that this creditor should not be counted.

Valley Forge Life Insurance:

Stanly contends that this creditor did not hold a claim as of the petition date because the premiums for the period had been paid. Also, Lopez is not the account debtor, but rather Madeline Lopez. See Keehn Dec at Exhibit L. Lopez argues that this is a life insurance policy which requires yearly payments. However, he provides no evidence that he, as opposed to Madeline, is the debtor on this account. Accordingly, the Court holds that this claim should not be counted.

Verizon Wireless:

Stanly contends that this claim was subject to a bona fide dispute as of the petition date. It appears from Lopez's testimony at his deposition that Verizon asserted a claim for $262.47, while Lopez disputed any amount over $35.00. Lopez eventually paid the disputed portion, but not until August 21, 2005 - nearly two months after the petition was filed. In his deposition Lopez explained that he disputed the claim, but that at some point he just got tired of fighting and paid it. He does not say that it was resolved prior to him simply paying the disputed amount. See Depo. Trans. at 151-54. Thus, it appears that as of the petition date, this claim was subject to a bona fide dispute and should not be counted.

Alternatively, Lopez admits that this creditor was paid postpetition and provides no evidence of value received in exchange. Accordingly, it should not be counted because it could be voided under § 549. Either way this claim should not be counted.

Wayne Wise:

Stanly alleges that this creditor received a preferential payment of $900 on April 17, 2005 for interest which had accrued on a note. Lopez argues that the payment was made in exchange for Wise's agreement to extend the maturity date of the note until Lopez could sell his residence.

The Court finds that the extension which Lopez received in exchange for the payment is akin to an agreement to forebear an action against the debtor which, although valid consideration for a contract, cannot constitute "new value," within meaning of the new value exception to trustee's preference-avoidance power. See, In re McLean Industries, Inc., 162 B.R. 410 (S.D.N.Y. 1993) (reversed on other grounds 30 F.3d 385). Thus, this creditor should not be counted.

Summary and Conclusion

Based upon the foregoing analysis, the Court finds that of the twenty-two creditors alleged by Lopez, seventeen must be excluded from the count in § 301(b)(2) for one or more of the reasons set out in § 301(b). This leaves only five holders of claims against Lopez that qualify to be counted under § 301(b)(2). Since this is clearly "fewer than 12," the petition was properly filed by one claim holder - Stanly.[1]

The Court does not reach the issue of whether Richard Kipperman (and/or Northwest Florida Daily News) is a proper petitioning creditor (which Lopez disputes), as only one petitioning creditor is required given the Court's ruling.

For the reasons set forth above, the Court grants Stanly's motion for summary judgment and denies Lopez's motion for summary judgment on the issue of the number of holders of claims against Lopez for the purposes of § 303(b).

IT IS SO ORDERED.

DATED: SEP 2 6 2006

PETER W. BOWIE, Chief Judge
United States Bankruptcy Court

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[1] In his opposition to the motion for summary judgment, Lopez alleges another, previously undisclosed creditor - Curd, Galindo & Smith, LLP. Even if this creditor were included, the number would still be insufficient to require more than one petitioning creditor.

UNITED STATES BANKRUPTCY COURT

SOUTHERN DISTRICT OF CALIFORNIA

In re Case No. 05-05926-PBINV

CERTIFICATE OF MAILING

The undersigned, a regularly appointed and qualified clerk in the office of the United States Bankruptcy Court for the Southern District of California, at San Diego, hereby certifies that a true copy of the attached document, to wit:

was enclosed in a sealed envelope bearing the lawful frank of the Bankruptcy Judges and mailed to each of the parties at their respective address listed below:

Attorney for Alleged Debtor:

M. Jonathan Hayes, Esq.
21800 Oxnard Street, Ste. 840
Woodland Hills, CA 91367

Attorney for Petitioning Creditor Alan Stanly:

L. Scott Keehn, Esq.
530 B Street, Suite 2400
San Diego, CA 92101

Said envelope(s) containing such document were deposited by me in a regular United States mail box in the City of San Diego, in said district on September 26, 2006.

Barbara J. Kelly

Barbara J. Kelly, Judicial Assistant

DOCKET NUMBER 89

UNITED STATES BANKRUPTCY COURT

SOUTHERN DISTRICT OF CALIFORNIA

Minute Order

Hearing Information:

Debtor:	FRANCIS J. LOPEZ
Case Number:	05-05926-PB7 **Chapter:** 7 INVOLUNTARY
Date / Time / Room:	MONDAY, OCTOBER 30, 2006 10:30 AM DEPARTMENT 4
Bankruptcy Judge:	PETER W. BOWIE
Courtroom Clerk:	MARILYN WILKINSON
Reporter / ECR:	LYNETTE ALVES

Matter:

STATUS CONFERENCE ON INVOLUNTARY PETITION AND ANSWER

Appearances:

Ron W. Noya, ATTORNEY FOR Francis J. Lopez
L. Scott Keehn, ATTORNEY FOR ALAN STANLY

Disposition:

Continued to 1/29/07 at 10:00 a.m.

DOCKET NUMBER 90

UNITED STATES BANKRUPTCY COURT

SOUTHERN DISTRICT OF CALIFORNIA

Minute Order

Hearing Information:

Debtor:	FRANCIS J. LOPEZ
Case Number:	05-05926-PB7 **Chapter:** 7 INVOLUNTARY
Date / Time / Room:	MONDAY, JANUARY 29, 2007 10:00 AM DEPARTMENT 4
Bankruptcy Judge:	PETER W. BOWIE
Courtroom Clerk:	MARILYN WILKINSON
Reporter / ECR:	LYNETTE ALVES

Matter:

STATUS CONFERENCE ON INVOLUNTARY PETITION AND ANSWER (fr. 10/30/06)

Appearances:

M. Jonathan Hayes, ATTORNEY FOR Francis J. Lopez
L. Scott Keehn, ATTORNEY FOR ALAN STANLY

Disposition:

Continued to 3/12/07 at 10:30 a.m.